The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

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VOL. LXXI. Saturday, September 17, 1927. No. 38

Current Topics.

A Great Lawyer-Gourmet.

ONE OF THE most memorable dicta of that distinguished Judge, Lord STOWELL, was that "a dinner lubricates business," and many of his successors in the law have given it their hearty approval. Was it not a celebrated Q.C. who commended Baron HULLOCK, of the old Court of Exchequer, as "a good man, an excellent man. He had the best melted butter I ever tasted in my life"? And was it not another Q.C.—ABRAHAM HAYWARD to wit—who dilated, in his delightful little masterpiece, "The Art of Dining," on the pleasures of the table with a gusto and literary skill that would have won the heart of Lord STOWELL and that of his friend, Dr. JOHNSON. While we in this country have raised statues and other memorials to distinguished lawyers of the past, we have not yet erected any monument to one whose fame was based more on his gastronomical than his legal knowledge. Our French neighbours have just shown themselves more appreciative of the lawyer-gourmet by the unveiling this week of a statue of BRILLAT-SAVARIN, whose "Le Physiologie de Goût," is the classic work on all that relates to gastronomy. The author was a judge of the Cour de Cassation, member of the Legion of Honour, and of most of the scientific and literary societies of France, but all these distinctions have paled into insignificance, and he is now remembered entirely by the work in question whose great charm consists in its mixture of wit and learning, *bons mots*, anecdotes, and instructive dissertations, upon which HAYWARD sought to some extent to model himself in his "Art of Dining." It is one more illustration of that versatility of talent which characterises the well-read lawyer.

Real and Ostensible Defendants.

WITHOUT GOING into the merits of the altercation between solicitor and counsel on Friday last week, at Marylebone Police Court, where it was alleged that counsel in a motorcar case was acting in the interests of an insurance company, rather than in those of the defendant and of justice, we may remark that there is a real evil of which that particular case may or may not be an illustration. Accidents in which vehicles are concerned often give rise to two sets of proceedings, one criminal and one civil. There is usually an insurance company concerned in the latter, and such a company gives legal assistance to the defendant in the criminal proceedings. Their interests and his do not necessarily run together, and there is a great temptation for counsel always to act in the interests of his real lay client, the insurance company, whose solicitors have instructed him. Often the accused is prepared to plead guilty to a summons for dangerous driving and to throw himself on the mercy of the court, in many cases very sound tactics. But he is encouraged, and almost compelled, to take the contrary course. The witnesses for the prosecution are assailed and treated as witnesses of untruth. The defendant goes into the witness box, and, if he does not actually perjure himself, he tells an uncandid story, throwing undeserved blame on innocent persons. He generally lets himself in for an increased penalty. All this is very unsatisfactory when it occurs. One remedy is for counsel to remember that he is first and foremost a minister of justice. He is to put forward all he can fairly say for the accused, and to discharge that duty without regard to any extraneous considerations whatever. But he ought not to be hampered in the civil proceedings by the results of the criminal prosecution. We have in mind a case where a metropolitan magistrate convicted a man of dangerous driving, the conviction being quashed on appeal to quarter sessions. In the later civil suit the judge practically told the jury that it would be wrong for them to find a verdict contradicting the judgment of quarter sessions. The jury—juries have a way of reacting unexpectedly—found for the plaintiff, and awarded substantial damages. We venture to say that the judge's direction was improper. On the whole, there is a good deal to be said for the course adopted by some courts of summary jurisdiction of adjourning the hearing of the summons till the civil suit has been determined.

Barratry.

DISCUSSING THE recent loss of a steamship which had been insured under a French policy, the City editor of *The Times* raised the question whether what had happened might amount in law to barratry. What is barratry? In the Marine Insurance Act, 1906—and we believe that under French law the term bears substantially the same meaning—barratry "includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer." If, for example, goods are lost or damaged by the master of the ship attempting to scuttle her, or by a fraudulent deviation for his own purposes, the loss is due to barratry. In modern times, the term is confined to this usage, but at one time it had a more extensive denotation. In that curious old work by Sir John SKENE, "*De Verborum Significatione*," one of the earliest of Scottish law dictionaries, published towards the end of the sixteenth century, "barratry" is explained, first, as "ane kind of simonie specially in obtaining the right of benefices," and then, it is added, that the term is "ane Italian word and be the Italian interpreters of the civil law is when ane judge corrupted be buddes [bribes], sik as gold and silver, judge wrangeously . . and swa doing sellis justice for meid and profit and makis his office readie to be boucht be him quha

will give maist therefor." Happily, we have long outlived the days when this form of barratry could occur in our country and so the use of the term in this connotation has become obsolete.

Reports of Divorce Cases.

THE JUDICIAL Proceedings (Regulation of Reports) Act has recently been the subject of some correspondence in a London morning newspaper. It is, of course, well known that the Act was strenuously opposed by the Press generally, and also by certain persons interested in the Divorce Court, which was the Court principally affected. Section 1 (1) (*a*) of the Act forbids the report, in any judicial proceedings, of indecent matter or "indecent medical, surgical, or physiological details the publication of which would be calculated to injure public morals." This was probably declaratory of the existing law, which, by being framed in a recent statute, may be strengthened. But s. 1 (1) (*b*) applies a stricter rule to Divorce Court reports, in effect forbidding details of evidence, other than those discussed by the judge, with a proper saving for *bonâ fide* reports written for the profession. One correspondent points out that certain newspapers, deprived of the Divorce Court garbage which they regularly dished up to their readers, have merely substituted similar matter from criminal prosecutions for offences against women and girls, blackmail founded upon revolting allegations, and breach of promise involving the accusation of seduction. Thus the moral value of the matter provided remains the same, though it may be collected at rather more trouble from hundreds of sources than when intercepted from the steady flow of detailed adultery issuing from the Divorce Court. Since the new Act has failed to stop the publication of undesirable detail, the argument is that it should be re-considered, and perhaps repealed. If, however, certain newspapers continue to confuse liberty with licence, the Press may one day have to face the situation that, instead of divorce reports being released to the level of others, reports from other courts may be tightened to the divorce standard. The Press, in fact, missed the opportunity, taken by film producers, of establishing its own censorship of divorce reports, enforced by boycott of newspapers offending against it—and how effective that boycott could have been the report of *Sorrell* v. *Smith*, 1925, A.C. 700, stands to testify. In consequence, the flood of details in a particular case so nauseated the Legislature that it curtailed an abused liberty. It seems quite possible that some criminal or civil case other than divorce may give rise to a similar flow of indecent matter, which may result in the further curtailment of reports, unless the Press, exercising better foresight than it did, sets its own house in order by establishing its own censorship. Over thirty years ago one newspaper steadfastly refused to report the prosecution of Oscar Wilde. The reading public expressed admiration—and bought the other newspapers. The moral was, and is, that until the less scrupulous editors and proprietors are bound either by statute or the enforceable regulation of the trade, the flow of garbage, being profitable, will continue. And if the Press as a united whole refrains from acting, sooner or later Parliament will have to do so.

An Alien's alleged Beach-landing.

THE ARREST of a Frenchman in Trafalgar Square on a charge of having landed in England from a sailing boat near Folkestone, and without permission of an immigration officer, is a reminder of our change of policy since the nineteenth century in such matters. Fifty or sixty years ago, we were proud of granting asylum to political refugees in Europe, and practically allowed all aliens who chose to land here to do so, and to stay as long as they liked—with the consequence that, with a small leaven of liberators, reformers, and genuine victims of tyranny, the criminal scum of Europe made London their headquarters. The evils of this had become apparent well before the death of QUEEN VICTORIA, and in 1905 the Aliens Act of that year created machinery to exclude criminals and paupers. Under the succeeding Government, however, its operation was restricted, and the policy of exercising a real supervision over the immigration of aliens practically dates from the war. Even now there is concession to the "right of asylum" theory in the fact that the Aliens Restriction Amendment Act, 1919, on which the Aliens Order of 1920 depends, is placed in the collection of hardy annuals which figure in successive Expiring Laws Continuance Acts. It seems unlikely, however, that we shall revert to the easy rules which permitted criminals of all sorts, souteneurs, bullies, and white slave traffickers, to carry on operations here, and endangered health by the free admittance of persons of the most insanitary habits. And so the Order of 1920 provides, as it necessarily must for its purpose, that aliens shall only land in certain ports where officials are ready to inspect their papers. These ports are specified in the Second Schedule to the Order, four of them—Lympne, Felixstowe, Croydon and Cricklewood—being air stations. Maximum penalties of a fine of £100 or six months' imprisonment are provided for contravention of its provisions, and persons who aid and abet immigrants to infringe them are also liable. The cases of *Musgrove* v. *Chun Teong Toy*, 1891, A.C. 272, and *Att.-Gen. for Canada* v. *Cain*, 1906, 542, stand as ample authority, were authority needed, that the British Empire claims the right of excluding aliens altogether and, therefore, of admitting them only under conditions. This right is, of course, also claimed by and conceded to all other Sovereign States, in many of which it is exercised much more drastically than in our own islands.

Compound Interest for 500 Years.

CHICAGO IS reported to have been excited by the action of a citizen who deposited a dollar in a local bank, with instructions that it should accumulate for 500 years at 3 per cent. compound interest, and then be paid to his estate. By the ordinary methods of computation, it would appear that the persons representing his residuary legatees would then be entitled to a sum approaching 3,000,000 dollars, as representing the original testator's forbearance to make use of that dollar, and his imposition of that forbearance to the third and fourth generations and long beyond. In England, of course, this worthy man would have found an insurmountable obstacle to his Thellusson-like ambitions in the re-enacted provisions of the Accumulations Act of 1800, evoked by the banker's will. Those provisions apply to accumulations directed not by will only, but by "any instrument or otherwise." The provision for accumulation would thus have been void, with the result that the residuary legatees, or next-of-kin, could call for the money, if not at the testator's death, then, at the latest, at the expiration of a period of twenty-one years from the death. And being in a position to call for the money, the Limitation Acts would at once begin to run against them, with the result that they would have to choose between taking a sum probably well under £1 from the bank or letting their rights lapse. Apart, however, from the provisions of the Thellusson Act, since the law against perpetuities does not apply to a mere personal covenant or contract (as laid down in such cases as *Walsh* v. *H.M. Secretary of State for India & A.-G.*, 1863, 10 H.L.C. 367 and *S.E.R.* v. *Associated Portland Cement Manufacturers Ld.*, 1910, 1 Ch. 12) there would seem to be no legal impediment to such an arrangement, provided the bank agreed to be bound by it. The Thellusson Act was passed too early to apply to Ireland, and too late to be incorporated into the law of the United States, though most states have a statute on its model. As a practical matter, of course, no one would trouble to perpetuate evidence for such a claim, so the bank might consider the dollar mere bounty. Perhaps the Chicago man's family may remember with sympathy the story of the intelligent little boy who, when told by his aunt that she would leave him a legacy of £1,000 if he went an errand for her, replied "Yes, auntie, thank you, and please may I have half-a-crown of it now?"

The Law in Fiction.

It is hardly possible to create a situation among living beings which has not some sort of legal aspect—even a Sunday-school treat might furnish a dozen problems—and, other things being equal, the more a situation is calculated to arouse interest and emotion, the closer looms the law. To take the obvious instance, it dominates a murder. A lady novelist, clever and justly popular, some time ago submitted a manuscript to a lawyer, who discovered that, as a culminating effect, the hero was tried for murder before the "ermined judge" two days after the offence, and before the body of the victim was discovered. So the poor lady had to take down her structure for alterations and repairs—and the next, which dealt with undue influence on a testator (always a risky matter in lay hands) was not submitted for inspection, and would have set any lawyer's teeth on edge.

On the whole, the advice may be given to the inexperienced author that the less he has to do with trials the better, and, if he must have a murder within the jurisdiction, he must learn the true sequence of the coroner's inquest, the proceedings leading to committal, and the trial itself; otherwise he will write something as ridiculous as the sea-coast of Bohemia, without being a Shakespeare.

For a trial carefully modelled on the real thing, reference may be made to that of Baboo Jabberjee for breach of promise of marriage at the suit of Jessamina Manklebow in Mr. Anstey's well-known "Punch" serial. This deserves its place as a milestone beside that of Pickwick (it is impossible to avoid a reference to Pickwick), and the observant reader may study the contrast between the two cases to his own edification. Mr. Justice Stareleigh told the witness, Samuel Weller (on the latter's retort to Serjeant Buzfuz "Quite enough to get, as the soldier said, when they ordered him three hundred lashes"), that "You must not say what the soldier or anyone else said; it's not evidence." Mr. Justice Honeygall, on a similar point taken by the Baboo, held that there was evidence of a conversation, but not of the facts therein stated. The above ruling of Mr. Justice Stareleigh has the compliment, perhaps unique, of quotation in a legal text-book, "Taylor on Evidence," 11th ed., vol. I, p. 393; in "Table of Cases," *Bardwell* v. *Pickwick*, until 9th ed.; as an accurate statement of the law, and that of Mr. Justice Honeygall merely expands and amplifies it. On this point the law remains as it was. Section 2 of the Evidence Further Amendment Act, 1869, however, allowed and practically required Jabberjee and Jessamina to testify, whereas Pickwick and Mrs. Bardell were disqualified from doing so. So that, whereas the cross-examination of Jabberjee by Mr. Witherington, Q.C., is left on record, the priceless encounter between Pickwick and Buzfuz was frustrated by the ancient law of evidence.

The honourable mention accorded to Dickens and Mr. Anstey must also be awarded to Mr. Galsworthy, who can dish up a trial without the K.C. sitting next to his lay client (which happens in "The Pictures") or the interposition of a witness, at a moment's notice, on his or her credentials alone, and to be cross-examined for three hours by a ferret-faced prosecuting counsel. The trial scene in the "Silver Spoon," for example, is one which any lawyer may read without jar to his sense of reality, and the passes between Sir James Foskisson, K.C., and Brane, J., are sometimes as nimble as those which might have occurred between Jessel M.R., and Sir Frank Lockwood.

Novelists who evolve legal procedure from their own inner consciousness will naturally regard the Statutes of Limitation as beneath contempt. Given the problem that the hero, starting penniless, must become rich about p. 285, there are several methods, which may be divided into two classes—those in which he makes his money, and those in which his money is thrust upon him. As to the former, there is no legal objection to his writing a successful novel or play, nor even, since the laws of forestalling and regrating have been repealed, making a corner in wheat or anything else; but the long-lost heir is subject to the R.P. Limitation Acts, and quiet adverse possession for thirty years entirely bars him (as recently demonstrated in "Points in Practice") unless, of course, the villain in possession became so as a trustee for him, like Mr. Bunker in Sir Walter Besant's "All Sorts and Conditions of Men."

There is, of course, no limit to the time in which a fund in Chancery can be claimed; but it may be well to remember that there is not much over a million pounds in all standing in the unclaimed list, and that half of that consists of sums of £150 or less. There are about 200 accounts which exceed £1,000, and, if the hero can secure one of the largest, no doubt he will have a competence; but the heroine must not expect wealth beyond the dreams of avarice, for to give the hero all the funds on all the accounts would be to strain probability too far.

Discussions on our divorce laws have been very much in evidence the last few years, and writers who wish to show that hardship is possible under them have a fairly easy theme. But the discovery of this hardship is not new, and the novelist who thinks he can improve upon "Jane Eyre" may not find in the end that the world agrees with him.

An ancient and tempting device to use for manœuvring the hero to the cross-road between the Path of Duty and his own Way of Glory is the condition precedent in a will. In its simplest and crudest form old Mr. A leaves his fortune to young Miss B on condition that she will marry young Mr. C, or *vice versâ*. It immutably follows that the young couple do not love each other, or they love a couple of anothers, and the situation is complete. The leading case is the little play "Uncle's Will."

Now, it cannot be said that in real life no testator has ever perpetrated such a silly condition, for a will in similar terms was proved in the middle of last century (see *Davis* v. *Angel*, 1862, 4 D.F. & G. 524), but its repetition is a great straining of probability. Apart from that, however, the novelist introducing this gambit is unknowingly treading on the most delicate ground as to the enforcement of conditions in restraint of marriage. Certain exceptions have been grafted on this rule, it is true, and a partial restraint may be good; but if the clay was all that the potter claimed for it, the next hero who was fettered by such a ridiculous condition would boldly carry the case to the courts, and obtain a ruling of the House of Lords that the attempt to bind a man's choice in this way was against public policy and void—a point for some reason not taken in *Davis* v. *Angel*, *supra*. In a certain popular music-hall sketch, which must have been played before hundreds of thousands of people, the hero's uncle leaves him a house upon the condition that he will thereon continue the old man's flourishing business of a gambling saloon. And so the groundlings continue to chortle, and the judicious to grieve.

And since, unfortunately, the good advice here given is likely to be treated in the usual manner, the writer will, in a laudable effort to be useful to such of his brethren as may be less learned, freely present the plot of a novel, for the benefit of those unable to swallow his other prescriptions. The heads are—(1) Old Mr. A leaves the young Earl of B and Miss C a million each if they will marry one another, failing which, all to the Duke of D. (2) Miss C, drawing herself up with queenly mien, informs the attorney who imparts the news to her, that it could never be. (3) The Earl of B makes a limelight speech to the same effect, and arranges to proceed to the Antarctic gold mines, since he has no money; but (4) for his trip he has to borrow from the usurer E, and his bosom friend, F, also lends him money. (5) The Duke, ignorant of the high resolve of the young couple, and supposing that they would have the common sense to consider the proposition fairly before they declined it, deems it his duty to cut the knot for them by (6) hiring assassins to murder the Earl. So they go to his flat and proceed accordingly, but,

unfortunately, the flat has been lent to Mr. F for the night, so Mr. F is the victim of a mistake, and (7) it appearing that the Earl had borrowed money from Mr. F, he is arrested, and (8) on the day after the crime, tried before the red and ermined magistrate, assisted by the Common Serjeant, with the three golden stripes on his arm. (9) They find him guilty, and the magistrate puts on his voluminous black cap, but (10) thereupon Miss C rises in court, is at once shown into the witness-box, and triumphantly secures an acquittal on an alibi. However, this being only about p. 150, further trouble is necessarily brewing, and (11) E, the usurer, threatens the Earl with penal servitude unless he fulfils his contract to pay a 1,000 per cent. on his loan. The Earl being unable to do so, the case comes before (12) the Lord Chancellor, sitting in his own court, in the well-known fog of Lincoln's Inn. The Earl makes another limelight speech on the iniquity of the law of contract, when suddenly (13) Miss B, who has been following the proceedings closely, points out to the Lord Chancellor, that the old usurer, E, has, in a moment of extraordinary aberration, forgotten to affix the wafer to the contract, so at once (14) the Lord Chancellor pronounces his solemn decree *nisi* with costs on the highest scale against the money-lender. Then (15) the Earl thanks Miss B (p. 297) and (16) . . . But at this point probably no more assistance will be needed. It may be added that no copyright of any sort in this powerful plot is claimed; and indeed, if the confession must be made, its leading incidents, together with the laws relating to them, are due to the sprightly imaginations of other and more inventive writers.

The Doctrine of Ostensible Authority.

THE operation of the doctrine of "ostensible authority" has been restricted by the decisions of the Court of Appeal this year in *Houghton & Co.* v. *Nothard Lowe & Wills, Ltd.*, 1927, 1 K.B. 426, and *Kreditbank Cassel* v. *Shenkers, Ltd.*, 1927, 1 K.B. 826. Since those cases the doctrine has been further considered in *B. Liggett (Liverpool), Ltd.* v. *Barclays Bank, Ltd.*, 43 T.L.R. 449, where the facts were as follows:—

In 1923, B. Liggett (Liverpool), Ltd., authorised Barclays Bank, Ltd., to honour cheques of the company provided they were signed by any two directors for the time being. Specimen signatures of Mr. G. F. B. Liggett and Mr. Edward Melia (the first directors) were sent to the bank manager, together with a copy of the memorandum and articles of association of the company. In July, 1925, Mr. Melia repeated the instructions that cheques were only to be paid if signed by him, and several times up to the end of August, 1925, he attended at the bank to sign cheques which had been presented, but were signed only by Mr. Liggett. The bank manager was away on holiday from 11th August to 9th September, 1925, during which time his assistant was in charge. On 1st September, 1925, the following notice on the company's paper was sent to the bank: "I have to inform you that (Mrs.) Eleanor May Liggett has been appointed an additional director of the above company and we accordingly enclose herewith the new director's specimen signature. The instructions with reference to the regulation of the bank account will remain the same as hitherto, *viz.*, that cheques should be signed by any two directors for the time being, *per pro* B. Liggett (Liverpool), Ltd. (signed) B. Liggett, Chairman." The assistant looked up the articles of association and thought that the notice covered all that was necessary, presuming that the new director had been appointed by the chairman. He did not ask whether a *quorum* was present, and thought that Mr. Melia was in Ireland, where he sometimes went on business. The assistant therefore honoured cheques signed by Mr. and Mrs. Liggett, and the bank manager on his return continued the practice until the end of September, 1925, when the irregularity was pointed out by Mr. Melia's accountant. The company thereupon sued the bank for the amount of the cheques (£5,981 2s. 1d.) as money had and received.

The case for the company was that the bank (1) had no authority to pay the cheques, and therefore (2) could not debit the company with the amounts. The defence of the bank was partly based on the well-known rule in *Royal British Bank* v. *Turquand*, 1856, 6 E. & B. 327. The contention was that the bank was entitled to assume that the above notice of 1st September, 1925, received from the chairman, was a valid and proper notice. The bank had a copy of the articles of association, from which it appeared that if the proper steps in the internal management of the company had been taken, Mrs. Liggett might have been duly appointed an additional director as stated in the notice. The reply of the company was that the bank was not entitled to rely upon the doctrine of ostensible authority, on the grounds that the bank (1) was put on inquiry by the circumstances of the case; and (2) was negligent in not investigating the position before acting upon the notice of appointment of a new director.

The action was tried at Liverpool Assizes, and Mr. Justice WRIGHT left questions to the special jury which, with their answers, were as follows: (1) Was the bank put on inquiry as to whether the appointment of Mrs. Liggett was in order?—Yes. (2) Whether the bank was guilty of negligence in paying the bills and cheques complained of?—Yes. The action was adjourned to London for further consideration, and it was then submitted on behalf of the bank that there was no evidence upon which the jury could give the above answers. The learned judge held, however, that the jury had substantial grounds for so doing, e.g.—Mr. Melia was known to the bank to be a director, and he was known to be anxious that no cheques should be paid without his signature; the notice of 1st September, 1925, was received by the bank at a time when it was thought Mr. Melia was away in Ireland; the bank therefore ought to have taken steps to ascertain whether Mr. Melia was concurring in the appointment of a new director.

It is clear from the two earlier 1927 cases (mentioned in the first paragraph above) that the rule in *Royal British Bank* v. *Turquand* can never be relied upon by a person who is put on inquiry. The rule proceeds on the assumption that certain acts have been regularly done, and if the circumstances debar a person from relying on the *primâ facie* presumption, he cannot rely on the doctrine of ostensible authority. The same circumstances may enable that person to escape liability on another ground, however, and on behalf of Barclays Bank in the present case this further point was raised:—

The cheques were all drawn in favour of ordinary trade creditors of the company, and the proceeds of those cheques were all applied to the payment of goods supplied to the company. From the end of August, 1925, Mr. MELIA withdrew completely from any active part in the management of the business and Mr. LIGGETT continued to conduct the retail provision business. He ordered goods which were duly delivered, and were in fact paid for by the cheques in question. Every cheque therefore represented a legal liability of the company, as the suppliers of the goods had no notice that the position had in any way changed, or that there was a deadlock on the board of directors. In these circumstances it was contended that the bank was entitled to credit for the amounts paid away on the cheques in discharging the debts of the company. The equitable doctrine was relied upon under which a person who has in fact paid the debts of another, without authority, is allowed to take advantage of his payment. The doctrine is sometimes stated as follows: the lender or *quasi*-lender is subrogated to the rights of the creditor who has been paid off. The doctrine has been applied frequently in cases where an agent, without authority, has borrowed money on behalf of his principal. The lender can then recover from the principal whatever portion of the amount borrowed has been applied in payment of the debts of the

principal, but not the balance. In considering the application of this doctrine, Mr. Justice WRIGHT held that the position was as follows:—

If this were a case in which the company's account was in debit throughout, then each of the cheques, when presented, would constitute a request for a loan, and the payment of that cheque would constitute the granting of that loan. As the cheque and the request were unauthorised, the case would be precisely within the decided cases with respect to borrowings made without authority. There was some evidence that at the relevant dates the company's account was in debit and there was an overdraft, but it was not clear that that was so throughout. If the account was in credit when any one of the cheques were presented, the bank, in paying the same without authority, was taking money which belonged to its customer, and paying that money away without authority. In other words, the bank would be in possession of a credit balance belonging to the customer, and without the customer's authority would be misapplying that credit balance. The relationship of customer and banker is that of creditor and debtor, and it is only by a figure of speech that the banker misapplies money of his customer which he has in his possession. By reason of the present system of banking facilities everything is done by way of credit or debit balances. In such a case there is obviously no conversion, but there is misapplication (under an honest mistake as to the validity of the authority) of the credits which constitute the medium of exchange in place of cash. Under these circumstances the above equitable doctrine of subrogation can be extended even to the cases where cheques were paid out of the credit balance, and not by way of overdraft. In that event the banker will be entitled to the benefit of that payment if he can show that it went to discharge a legal liability of the customer. The customer, in such a case, is no worse off, as the legal liability for goods is discharged, and he then owes the money to the bank instead of to a trade creditor. The learned judge, therefore, ordered an inquiry before a referee as to the circumstances under which each cheque was paid, viz. (1) what was the state of the company's account with the bank at the date of each payment; (2) was it made in respect of goods supplied, and made in the ordinary course of business? On the answers to the above questions depended the bank's liability to repay to the company the whole or part of the amount of the cheques.

This judgment, extending the equitable doctrine as above, was based on *A. L. Underwood, Ltd.* v. *Bank of Liverpool and Martins*, 1924, 1 K.B. 775. A. L. UNDERWOOD was the sole director of a one-man company—A. L. Underwood, Limited—which had a separate account at another bank, though the Bank of Liverpool did not know this. UNDERWOOD, as sole director, became possessed of cheques payable to the company, which he indorsed "A. L. Underwood, Ltd.—A. L. Underwood, sole director." He paid these cheques into his private account with the Bank of Liverpool, instead of into the company's account with the other bank. The Bank of Liverpool did not inquire whether the company had a separate bank account, as it was known that UNDERWOOD owned all the shares except one, and he was treated as being identical with the company. The Bank of Liverpool therefore collected the cheques and credited UNDERWOOD with the proceeds, which he misappropriated. An action was then brought—nominally by A. L. Underwood, Ltd., substantially by Lloyds Bank, Ltd., as debenture-holders—against the Bank of Liverpool for conversion of the company's cheques paid into his own account by UNDERWOOD. The Bank of Liverpool relied on the doctrine of ostensible authority, but Mr. Justice ROCHE and the Court of Appeal held that UNDERWOOD was doing something unusual, which ought to have attracted the attention of the bank's servants. The latter had been negligent, and judgment was therefore given against the bank for conversion. It was then contended, in mitigation of damages, that the bank should not be ordered to repay the full face value of the cheques, as some of them had been applied by UNDERWOOD in payment for goods supplied to the company. An inquiry was, therefore, ordered as to whether UNDERWOOD's private account at the time of dealing with each cheque was in credit or not, leaving the amount of the judgment to be afterwards ascertained.

Although the decisions of 1927 have limited the scope of the rule in *Royal British Bank* v. *Turquand*, it is evident from the cases that the defendant who loses on the swings of ostensible authority may gain on the roundabout of subrogation.

The Unemployment Insurance Act, 1920: Employment in Horticulture.

AMONG the employments which are excepted from the Unemployment Insurance Act, 1920, by Pt. II of the Schedule thereto, is employment in agriculture, including horticulture and forestry. To the already existing decisions as to the circumstances in which a person is to be deemed to be or not to be engaged in horticulture, must now be added the decision recently given by Mr. Justice ROCHE *in re Applications by Thomas Rochford & Sons, etc.* (*Times*, 30th July, 1927).

In that case the persons in question (one man and five women) were employed by horticulturists or nurserymen, growers of fruit, plants, flowers etc., which were sold either to florists or other buyers. The man was a foreman who superintended the operations of the women, the work of the latter consisting *in preparing the products for sale*, e.g., by trimming and washing the plants, selecting and bunching cut flowers, grading the fruit and tomatoes and packing all these products for despatch. The question that was raised was whether these six persons were or were not engaged in horticulture for the purposes of the exception contained in Pt. II of the Schedule to the Unemployment Insurance Act, 1920. On a careful examination of this case, however, it appears that the real principle in issue was whether or not persons employed *in connexion with the marketing* of such products, i.e., in making the products ready for the consumer or buyer, are, nevertheless, to be regarded as engaged in horticulture (i.e., if the products in question are horticultural products). From *Vellacott's Case*, 1922, 1 K.B. 466; *Dryburgh's Case*, 1926, Sc. L.T. 99; and from *Rochford's Case, supra*, the principle may be broadly laid down that the fact that the employees in question are engaged in marketing operations, i.e., getting the goods ready for the consumer or buyer, will not in itself necessarily prevent the employment from being employment in horticulture or agriculture, etc., as the case may be. The distinctions, however, are somewhat fine, and it is not always an easy matter to determine whether a person engaged in such marketing operations is nevertheless to be regarded as engaged in horticulture, etc., as the case may be.

It is submitted that in every such case the *important test is to determine whether the employee brings to such marketing operations any skill or knowledge of the particular products with which he or she is dealing.* On this ground, it seems that a person who is engaged in separating and purifying seeds grown for the purpose of sale is to be regarded as notwithstanding engaged in agriculture or horticulture: *Daniel's Case*, 92 L.J. K.B., 229; and it is according to the same principle that the employees in *Rochford's Case, supra*, were equally to be regarded, as in fact ROCHE, J., held, as being so employed, since they brought a certain amount of skill and knowledge to their work, i.e., of trimming the plants, selecting and bunching the flowers, grading the fruits and tomatoes, etc. On the other hand, a person like a whole-time milk roundsman cannot be regarded as having any special knowledge or skill in connexion with the commodity which is being vended,

and on that ground is not to be regarded as being employed in agriculture.

The above proposition, it is submitted, appears to be in accordance with the following working rule laid down by Mr. Justice ROCHE in *Rochford's Case*—

> "Persons are employed in agriculture and horticulture when employed upon any operations done about the production, preparation or transfer of the products of farm or garden or orchard in the best saleable condition to a first buyer or to a salesman or agent for sale if one be employed, or to a distinct business under one proprietorship, as in *Daniel's Case, supra*. But if the industrial status and occupations of the employed persons are such that, though they are working about or in connexion with a farm or garden or orchard, they may properly be said to be essentially pursuing their own special occupations, they are not employed in agriculture or horticulture within the meaning of this rule."

Sewers and Drains.

BY ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from page* 643.)

Another illustration of the principle that a pipe may be a sewer before it receives any drainage will be found in *Hornsey Local Board* v. *Davis*, 1893, 1 Q.B. 756. There a sewer had been laid in a street at the bottom of which ran the New River. Until an outfall was provided for crossing the New River the pipe could not be used, and was not in fact used. It was held that the street must be taken to be sewered for the purposes of s. 150. From these cases it would appear that a pipe or channel for sewage may be a sewer, although it has no outfall at all, and in any case the outfall, whatever it may be, is not included in the definition of a sewer. In the case of *Sutton* v. *Norwich Corporation*, 27 L.J. Ch. 739, KINDERSLEY, V.-C., speaking of the meaning of the expression "sewer," said: "In the common sense of the term it means a large and generally—though not always—underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining sewage, whether as a simple deposit or to be converted into manure or other useful purpose."

In this connexion it is necessary to refer to a case which has created a good deal of difficulty. The case is *Meader* v. *West Cowes Local Board*, 1892, 3 Ch. 18. In that case, A, having drained ten houses belonging to him into a cesspit, constructed a line of pipes across the adjoining land belonging to B without his leave or licence, through which the overflow from the cesspit was carried into a river. B blocked up these pipes and a nuisance was consequently created by the cesspit. A then commenced an action against the local board to force them to abate the nuisance. It was held that the cesspit was not a sewer or a work belonging thereto within the meaning of s. 13 of the Public Health Act, 1875, and therefore it had not vested in the local board and they were under no liability to prevent the nuisance. To the extent above stated, the decision is no doubt correct. But in the course of the judgments in the case the judges made use of some expressions to the effect that, not only was the cesspit no part of the sewer, but that the pipe common to the ten houses and leading to the cesspit was not itself a sewer. This decision cannot be reconciled with that in the earlier case of *Pinnock* v. *Waterworth*, 51 J.P. 248. In that case MATTHEW, J., said: "A builder had constructed a number of houses. He made a drain and a cesspool and connected them with the first house, and as he completed successive houses he continued the drain from one house to the other, carrying the cesspool forward, and finally, when all the houses had been completed, there was a line of pipes connected with the cesspool. In time that cesspool became a nuisance. Now was the line of pipes and the cesspool something to be made for the purpose of profit within the meaning of section 13? It could not be said to be so. If such pipes were to be excepted from the Act the operation of the Act would be narrowed down to the smallest possible point."

Later cases, such as *Waltham Holy Cross U.D.C.* v. *Lea Conservancy Board*, 74 J.P. 253, and *Titterton* v. *Kingsbury Collieries Ltd.*, 75 J.P. 295, appear to justify the general conclusion that where a pipe carries the sewage of a number of houses into a cesspool or other like receptacle, the common pipe is a sewer as defined by the Act, although the cesspool or other receptacle may not be part of the sewer. In the last of the cases above cited the line of pipes ended in some private sewage works which were clearly no part of the sewer, and it has been held that an engine house with pump and machinery for forcing sewage along a rising main to a common outfall for treatment is not a sewer but comes within the description of a work for the purpose of receiving or otherwise disposing of sewage within the meaning of s. 27 of the Public Health Act, 1875 (see *King's College, Cambridge* v. *Uxbridge R.D.C.*, 1901, 2 Ch. 768). An interesting question arises on consideration of these cases. Assume that a pipe common to a number of houses discharges into private sewage works, that is to say, works provided by the owner of the houses for the purpose of the treatment of the sewage: There seems to be no obligation upon a private person who has made such a provision continuing to maintain the disposal works, and if he declines to do so, whereby a nuisance is caused, is he liable for that nuisance? On the other hand, is the local authority to be saddled with the obligation to maintain such works although they have in no way been parties to the erection of them and may, indeed, have disapproved of them? On this subject, reference may be made to a very recent case, *Attorney-General* v. *Peacock*, 1926, 1 Ch. 241.

It has already been stated that a sewer may be an open ditch (see on this point, *Kirkheaton L.B.* v. *Beaumont*, 52 J.P. 68, and *Wheatcroft* v. *Matlock L.B.*, 52 L.T. 356). By way of further illustration reference may be made to *Wilkinson* v. *Llandaff & Dinas Powis R.D.C.*, 1903, 2 Ch. 695. The facts of that case are as follows: At the side of a road which was vested in a local authority was an open channel, not paved with stone and not very clearly defined on the side toward the centre of the road, made for the purpose of carrying off the surface water from the road. In the channel were gullies by which the water passed through pipes into an underground drain. Rainwater from the roofs and the curtilages of many of the houses in the road also passed through pipes into the channel. Sewage from one of the houses escaped into the channel and caused an illness of the plaintiff's child. In an action by the plaintiff against the local authority it was held that the channel was a sewer and that under s. 19 it was the duty of the defendants to cleanse the channel so that it should not be a nuisance or injurious to health.

These cases establish that a channel, to use a neutral expression, need not be covered, but it may be mentioned here that a sewer may be above ground and need not necessarily be beneath the surface (see as to this, *Roderick* v. *Aston L.B.*, 5 Ch. D. 328; *Morris* v. *Mynyddislwyn U.D.C.*, 1917, 2 K.B. 319). A natural stream may, in some circumstances, become a sewer, but it must be remembered that there is a distinction between a polluted stream and a sewer. In one case it was held that a stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three houses in its passage to a river into which it flowed was held not to be a sewer (*Reg.* v. *Godmanchester*, L.R. 1, Q.B. 328). In a later case, BYRNE, J., said: "I think it is possible to form a sewer without the construction of any

artificial work. If, for instance, an old ditch or the bed of a watercourse from which the flow of water has been diverted is utilised for the carriage of sewage matter, such utilisation would be properly described as forming a sewer. I think a sewer may be formed within the meaning of the section either by artificial construction or by the utilisation of natural channels. It is a question of degree, and I should think that none would dispute that if a body of sewage a hundred times as great as the natural flow of water in a stream were discharged into the channel continuously, a sewer would be formed." The principle thus laid down has been acted upon in many cases, and the principle may be thus stated: It is a question of degree in every case whether the discharge of sewage into a brook has the effect of converting that brook into a sewer, and this must depend upon the relative amount of the sewage discharged into the brook and the water which naturally flows in the brook.

It has been held that a bourne flow, or intermittent stream issuing from the chalk, is not a sewer (*Pearce* v. *Croydon R.D.C.*, 74 J.P. 431). But in another case, crude sewage was discharged by a local authority into a channel or intermittent stream which ran in an old culvert through private land, and then in the open air alongside that land to a tidal river, the stream itself being tidal up to the point where the sewage entered. The local authority had not interfered with the natural flow of the stream which only ran during the winter and in the summer the channel conveyed nothing but sewage with the exception of the tidal water with which it was diluted twice a day. It was held that notwithstanding the winter flow of fresh water and the daily flow of tidal water, the channel was a sewer (*Attorney-General* v. *Lewes Corporation*, 1911, 2 Ch. 495).

It may be convenient at this point to notice that a pipe or channel may be a sewer although it conveys only surface water. In the case of *Ferrand* v. *Hallas Land & Building Co.*, 1893, 2 Q.B. 135, it was held that the draining of rain or surface water collected from different premises by different feeders into one main drain would constitute that main drain a sewer within the meaning of the Act. This has been followed in more recent cases. Thus it has been held that the pipes which carry off surface water only from the roofs and yards of houses are within the definition of the word "drain" (*Holland* v. *Lazarus*, 66 L.J. Q.B. 285, and this was followed and approved in *Silles* v. *Fulham Borough Council*, 1903, 1 K.B. 829). In that case VAUGHAN WILLIAMS, L.J., said: "The decision in *Holland* v. *Lazarus* is to the effect that a drain comes within the terms of the definition of a sewer where it is used for the drainage of two buildings, even although, in respect of one of them, it carries off only rain water. It seems to me that it was rightly so held upon the terms of the section, and that where, as in this case, you have a drain which carries off sewage from one house, and into which another drain discharges drainage, though of rain water only, from a different house, the drain so receiving the drainage of both houses is a sewer within the definition."

(To be continued.)

A Conveyancer's Diary.

Leases by Mortgagor and Mortgagee.

All leases or tenancies at a rent for a term of years absolute, authorised to be granted by a mortgagor or mortgagee, should be granted by the person empowered to grant the same in the name and on behalf of the estate owner: see L.P.A., 1925, s. 8 (1). Where a mortgagor and mortgagee are made to join in a lease the question arises in whose name and on whose behalf the lease ought to be made, for both will generally be estate owners. If the mortgage be by demise or sub-demise the mortgagor will be an estate owner, for he will have the freehold or leasehold reversion vested in him, and the mortgagee will also be an estate owner as respects the term of years or sub-term vested in him: see L.P.A., 1925, s. 1 (1), (4). Again, if the mortgage be in the form of a charge by way of legal mortgage (the best definition of which seems to be that which is contained in the L.R.A., 1925, s. 3 (i) as "a mortgage created by charge under which, by virtue of the Law of Property Act, 1925, the mortgagee is to be treated as an estate owner in like manner as if a mortgage term by demise or sub-demise were vested in him"), the mortgagee will be an estate owner by virtue of L.P.A., 1925, s. 1 (2) (*c*), (4). It seems at first sight, therefore, to be immaterial in the name of which of them it is granted.

Where, however (as generally will be the case) the lease is granted for a term less than that which is or is deemed to be vested in the mortgagee, it seems that the proper course is to make it in the name of the mortgagee: see, for example, 3 Prideaux, pp. 1016, 1017. The immediate interest out of which the lease is carved is the interest vested or deemed to be vested in the mortgagee. It takes effect out of the immediate and not out of the reversionary estate. Hence it is the owner of the immediate and not the owner of the reversionary estate who is the estate owner in whose name the lease ought properly to be made.

It will be noted that, accordingly, in the form referred to, *supra*, in "Prideaux," the mortgagee is made to demise (at the request of the mortgagor) and the mortgagor is expressed to demise and confirm.

Tacking: L.P.A., 1925, s. 94.

We observe a courteous reply by Mr. Conway Morris in 64 L.J. 143, to our remarks on p. 643, *ante*. It may be sufficient, for the present, to point out that there is a fundamental distinction between, first, a mortgage made expressly to secure £*x*, and further advances generally; and, secondly, a mortgage in which the mortgagor binds himself to make definite further advances. In the first case the mortgage can be stamped to cover the £*x*, and can be further stamped to cover the further advances if and when made. It is nevertheless a mortgage within L.P.A., 1925, s. 94 (2). On the other hand, where there is a liability to make the further advance this comes within sub-s. (1) (*c*).

Second or Subsequent Mortgage in the Form of a Charge by way of Legal Mortgage.

THE suggestion has been made that a mortgage by way of legal charge is only appropriate for a first mortgage. This view seems to be based upon the argument that as L.P.A., 1925, s. 87 (1), only mentions a term of 3,000 years (where the mortgage is of an estate in fee simple), or a sub-term less by one day than the term vested in the mortgagor (in the case of a mortgage of a leasehold interest), only one mortgage, in the form of a charge by way of legal mortgage, and that a first mortgage, is contemplated.

The argument is clearly erroneous, for, first, the old rule still stands that a legal estate may subsist concurrently with, or subject to, any other legal estate in the same land: L.P.A., 1925, s. 1 (5); and secondly, the rule in *Re Moore and Hulm*, 1912, 2 Ch. 105, has now received statutory confirmation: L.P.A., 1925, s. 149 (5). Accordingly, successive terms of the same duration (3,000 years) created out of a fee simple estate, or successive sub-terms, being in each case one day shorter than the head term, created out of a head term, take effect at law, the second or subsequent term or sub-term creating a reversion expectant upon the prior term or sub-term.

As the learned editors of "Wolst. & Cherry" observe (Vol. I, p. 394), the rule in *Re Moore and Hulm*, *supra*, is actually relied on for the purposes of L.P.A., 1925, 1st Sched., Pt. VIII, paras. 2 and 6—both provisions contemplating the possibility of the sub-terms being of equal duration.

It is to be observed that L.P.A., 1925, s. 88 (1) (*a*) and (*b*), actually contemplates a second or subsequent mortgage by way of legal charge; and we note that two precedents are set out in "Prideaux" (Vol. II, pp. 116–121), of puisne mortgages in the form of charges by way of legal mortgage.

Landlord and Tenant Notebook.

Estoppel as between Landlord and Tenant.

In practice, it sometimes becomes necessary to consider and to apply the doctrine of estoppel in cases between landlord and tenant, and, as the application of this principle is not infrequently attended with some difficult problems, it may be of advantage to examine the subject at length.

It may be taken as a general principle that, where a person is let into possession of premises by another, the former cannot dispute the title of the latter as at the date of his entering into possession of the premises.

Thus in *Cook* v. *Whellock*, 24 Q.B.D. 658, the plaintiff, who was an undischarged bankrupt, let certain premises to the defendant and subsequently brought an action against the defendant to recover arrears of rent. It was contended on behalf of the defendant that at the time when the premises were let to him the plaintiff was an undischarged bankrupt, and that accordingly he had no authority to let the premises, the trustee in bankruptcy really being the landlord. The court, however, held that the defendant was estopped from disputing the plaintiff's title. "*Having been let into possession of premises by the plaintiff*," said Lord Esher, M.R. (*ib.*, at p. 661), "he [*i.e.*, the defendant] cannot say that the plaintiff is not his landlord, but the trustee in bankruptcy."

And in such a case, where another person claims to be the real landlord, and the tenant, disclaiming his own landlord's title, gives up possession to the claimant, the latter, in an action for ejectment against him at the suit of the tenant's landlord, will equally be estopped (*i.e.*, from disputing the title of the tenant's landlord). It was so held in *Doe* v. *Smythe*, 1815, 4 M. & S. 347, in which case Dampier, J., said that neither the tenant nor anyone claiming by him can controvert the landlord's title. He cannot put another person in possession, but must deliver up to his own landlord. So, again, in *Doe d. Bullen* v. *Mills*, 1834, 2 A. & E. 17, where premises had been let to a tenant and another person claiming them by an alleged title adverse to that of the lessor, and prior to the lease, demanded them of the lessee, and ultimately obtained possession by paying him £20, it was held, in an action of ejectment brought by the tenant's lessor against the claimant, that the latter could not set up his adverse title against the landlord. In his judgment Taunton, J., said: "The defendant Mills, having paid the £20 for the lease, and thereupon taken possession, put himself in the situation of an assignee of that lease, and was as much estopped from disputing the landlord's title as the immediate lessee."

There are several important exceptions, however, to the above doctrine, and it is in connexion therewith that the greatest difficulty is to be experienced in the application of the principle of estoppel to cases arising between landlord and tenant.

Perhaps the easiest exception to understand is the exception that a tenant is not estopped from alleging that his lessor's interest in the premises has come to an end, *subsequently to the date on which he was let into possession*. It will be observed that while the tenant may not dispute the lessor's title, at the date of the demise, and his entry into possession, he is not precluded from alleging that the lessor's interest has *since* that date come to an end. Thus a lessor may sell or mortgage his reversionary interest, and it is clear that, in such cases, the tenant is not estopped from alleging the termination of his lessor's interest.

This point is well illustrated by *Sergeant* v. *Nash, Field & Co.*, 1903, 2 K.B. 304. There premises had been leased, and the lease contained a covenant against assigning, etc., without consent. The lessee created a yearly tenancy under which the plaintiff became tenant. On the same day the lessee mortgaged the premises by way of sub-demise. The lessee subsequently became bankrupt, and the mortgagees appointed a receiver. Subsequently the head lessor purported to forfeit the lessee's interest, as the court subsequently held he was entitled to do.

The plaintiff, after the commencement of this action, paid one quarter's rent, but refused to pay any further rent to the Receiver, who thereupon distrained. The plaintiff thereupon brought an action for illegal distress. The court held that the distress was illegal. In his judgment Collins, M.R., said: "It is clear that though a tenant cannot deny the title of his landlord to deal with the premises, he may prove that the title has determined. That fact was abundantly proved, and there was certainly no estoppel arising from any act of the tenant which could induce the mortgagees to suppose that they were acting on an admission that the relation of landlord and tenant existed when the distress was put in."

This case is also authority for the proposition that payment of rent by a lessee to a lessor after the lessor's title has expired, and after the lessee has notice of an adverse claim, does not amount to an acknowledgment of title in the lessor, unless at the time of payment the lessee knows the precise nature of the adverse claim, or the manner in which the lessor's title has expired.

(*To be continued.*)

Reviews.

Marine Insurance: The Doctrine of Proximate Cause and Insurance against War Risks at Sea. Two Lectures delivered at the London School of Economics and Political Science. By The Hon. Mr. Justice Wright, M.A. Reprinted from The Solicitors' Journal. The Solicitors' Law Stationery Society, Ltd., London: 94-97 Fetter lane, E.C.4. 26 pp. 2s. 6d. net.

These two lectures by Mr. Justice Wright, originally given at the London School of Economics and now reprinted from The Solicitors' Journal, are, as one would expect, most instructive and of the greatest interest to those concerned with the law of Marine Insurance. The first, especially, on the doctrine of the proximate cause, is a remarkable survey of this most difficult and important subject. Notwithstanding the eminence of the learned author one may perhaps doubt whether his solution, so far as he offers one, of the problem set by the authorities is altogether satisfactory; on the other hand, it is impossible to deny the force of his argument. It is interesting to learn that he prefers the opinion of Lord Sumner in *Samuel* v. *Dumas*, 1924, A.C. 431, to those of the majority in that case. The second lecture, on War Risks Insurance, is of less general importance, but gives a lucid view of the subject, and an accurate appreciation of where the difficulties lie. The book is short, but will well repay study.

The Legacy of the Middle Ages. Edited by C. G. Crump and E. F. Jacob. 1926. Oxford: Clarendon Press. xii and 549 pp. 10s. net.

The text of the introduction to this admirable volume of essays is that we are nearer akin to the Middle Ages than we realise, and that it behoves us therefore to learn something about their legacy to modern times. There are occasions when we would heartily agree with this view. In our present mood we take leave to disagree, but at the same time cordially recommend anyone whose interest lies in the direction of historical study to acquire and peruse this volume.

The form which the volume takes is that of a series of Essays, all extremely readable and of moderate length, dealing with such subjects as Art, Literature, Philosophy, Education, Religion, the Position of Women, Economics, Politics and Law. Each essay is written by a scholar of world-wide renown. To take only the legal subjects, to which we were naturally most attracted: The Essay on Customary Law is by the late Sir Paul Vinogradoff; that on Common Law by Professor

Gabriel Le Bras, of Strasburg; and the Sorbonne Professor, Edward Meynial, writes on Roman Law. For a general view of the subjects discussed, we can suggest nothing better than a study of these Essays. It seems a pity, however, that there is not appended to each essay a short bibliography to guide the reader in a further study of the subject.

The History of Contempt of Court: The Form of Trial and the Mode of Punishment. By Sir JOHN C. FOX, late Senior Master of the Supreme Court, Chancery Division. Oxford University Press. 1927. xxiii and 252 pp. 16s. net.

This is an eminently readable exposition of a subject which, though important, is not, apparently, too well known. The learned author has carried back his researches to the early thirteenth century and has carefully sifted and collected a mass of cases from the plea rolls, year books and reports, and has dealt with all the relevant statutes down to modern times. The list of authorities and the copious references are sufficient proof that the historical development of contempt of court has been thoroughly investigated. The substance of the first seven chapters has already appeared in the *Law Quarterly Review*. The account of *Almon's Case* and the observations thereon are very instructive. The chapters dealing with Amercement and fine, and *Almon's Case* in the United States, are entirely new. A wealth of evidence has been collected to prove that the practice of trying contempts out of court summarily and punishing them by the double penalty was first established in the seventeenth century. There is an Appendix of some eighty early cases of contempt committed by strangers out of court and tried by a jury, to which the author has added some valuable notes. The work covers a great deal of what was before untrodden ground, and is a masterful and learned treatise on the historical development of contempt of court.

The British Year Book of International Law, 1927. London: Humphrey Milford Oxford University Press. vi and 256 pp.

The eighth issue of the British Year Book of International Law, edited by Sir Cecil Hirst, Professor Pearce Higgins and a distinguished editorial committee constitutes a worthy addition to an excellent series.

In the first article Mr. H. W. Malkin, C.B., C.M.G., throws new light upon the Inner History of the Declaration of Paris. Sir John Fischer Williams, K.C., in the second article, analyses the conception and discusses the problems of denationalisation. Then Mr. O. H. Mootham carefully traces the origin and infancy of the Doctrine of Continuous Voyage. The Chichele Professor of International Law considers the suggestion of establishing an International Criminal Court, arriving at the conclusion that there is no need for such a court. Dr. Lauterpacht learnedly deals with the views of Spinoza upon International Law. Under the title "Criminal Jurisdiction over Foreigners," Mr. W. E. Beckett discusses the important cases of *The Franconia* and *The Lotus*. And in the seventh article of this admirable collection the Whewell Professor of International Law surveys the use of Retaliation in Naval Warfare.

The volume also contains notes of the Decisions, Opinions and Awards of International Tribunals for 1926, and of the principal decisions during the same period of National Tribunals involving Points of International Law.

We heartily commend the British Year Book for 1927 to our readers.

A Practical Guide to the Land Charges Act, 1925. By A. H. COSWAY. 1927. London: Effingham Wilson. vii and 109 pp. 4s. net.

This work contains a breezy, critical survey of the provisions of the Land Charges Act, 1925. The interests in respect of which land charges are registrable are in turn discussed. The object and effect of a priority notice are considered. Some general remarks are made on the subjects of Registration, the Cancellation of Registration and Searches. And the scheme of the local land charges sections is explained. In the Appendices are set out the Schedule of Fees payable and Forms to be used on registration. The author does not hesitate to express his views upon the convenience or otherwise of the forms and methods of registration, but in several instances we fail to agree with his criticisms.

We have no doubt that the work will prove useful in guiding the practitioner through both the provisions of the Land Charges Act, and the sections relating to registration of land charges contained in the Law of Property Act, 1925, and the Amending Act of 1926.

Books Received.

Annual Local Taxation Returns, 1924-25. Part III. Comparative Local Financial Statistics of County Councils, the Councils of Boroughs, Urban District Councils, Rural District Councils, etc., and the amounts of the outstanding loan debts up to 31st March, 1925. 59 pp. 1927. H.M. Stationery Office. 4s. net.

Reports of Tax Cases. Vol. XII, Part X. 1927. H.M. Stationery Office. 1s. net.

University of London. Faculty of Laws Section of the University College Calendar, 1927-28. Including particulars of the Inter-Collegiate Courses in Law by the Professors and Teachers of University and King's Colleges and the London School of Economics.

The Trade Disputes and Trade Unions Act, 1927. Annotated with four Introductory Chapters and Notes. LEWIS B. FERGUSON. Foreword by The Rt. Hon. Lord ASKWITH, K.C.B. Demy 8vo. pp. xv and 99 (with Index). Butterworth & Co., Bell-yard. 5s. net.

The Law and Practice relating to Coroners. THOMAS OTTAWAY, Solicitor and Notary, Coroner for Hertfordshire. Demy 8vo. pp. xiv and 120. Index, 13 pp. Butterworth & Co., Bell-yard. 10s. 6d. net.

Correspondence.

Bankers' Drafts on Completion of Purchases.

Sir,—The suggestion put forward by Mr. J. Knight on p. 709 would, if followed, give a high degree of safety to the draft, and would minimise if not entirely exclude the risks mentioned in *The Law Society's Gazette*. It might, however, give rise to a different risk, if, by misdirection of an envelope or in any other way, the draft reached the vendor's solicitor otherwise than by delivery from the purchaser's solicitor. It is just conceivable that in such circumstances it might be misappropriated, and the L.P.A., 1925, s. 69, would not then apply.

Lincoln's Inn. A SUBSCRIBER.
14th September.

The Property Mart.

We are informed by Messrs. Goddard & Smith, of 22 King-street, St. James, that of the freehold ground rents which were announced in THE SOLICITORS' JOURNAL on the 10th inst., the following have since been sold privately, viz.: Nos. 2 to 48 (even), Aldridge-road Villas; Nos. 3 to 17 (odd), Tavistock-road; Nos. 1 to 49 (odd), Leamington-road Villas, and Nos. 10 to 26 (even), Cornwall-road, Paddington.

At the sale by auction on the 8th inst., and announced in THE SOLICITORS' JOURNAL on the 20th August, Messrs. Goddard and Smith also disposed of the freehold residential property known as "The Close," Finchampstead, Wokingham, Berks.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

PRE-1926 INTESTACY—SALE AFTER 1926—TITLE DOWER.

946. *Q.* A died intestate in 1914, leaving a widow, B, and eldest son and heir-at-law, C, him surviving, and seised in fee simple of a freehold house. B took out administration in 1915. It has now been arranged to sell the house, and I am acting for all parties. No conveyance by B to C has been executed. Will you kindly tell me how the sale should be carried out?

A. The heir should sell as absolute owner with the widow's concurrence, see "A Conveyancer's Diary," vol. 70, pp. 723-4. (It is assumed that the circumstances are such that the assent of the administratrix would be implied under the doctrine of *Wise* v. *Whitburn*, 1924, 1 Ch. 460.)

POST-1925 INTESTACY—INFANT—LUNATIC.

947. *Q.* A dies in 1927 intestate, and the persons entitled to his estate are a brother and the issue of deceased brothers and sisters. One of such issue (who is a son of a deceased child of a deceased brother) is an infant; and another (who is a child of a deceased brother) is a person *non compos mentis* maintained at the ratepayers' expense in a public asylum, but not a lunatic so found, nor has a committee been appointed.

(1) (*a*) Is the infant "absolutely entitled" within the meaning of s. 42 (1) of the A.E.A., 1925? If he dies under twenty-one it would appear that his representatives do not take his interest.

(*b*) If not, it is presumed the administrators must invest his share and use the income for his maintenance until he attains twenty-one.

(2) (*a*) Who can give a valid receipt for the share of the *non compos mentis* beneficiary?

(*b*) Will the administrators be safe in paying the share to the asylum authorities to be used for his maintenance?

The share in (1) (*a*) will not exceed £100, and the share in (2) (*a*) will not exceed £300.

A. (1) (*a*) Section 42 (1), *supra*, implicitly assumes that an infant entitled under the intestacy of a person dying after 1925 can be "absolutely entitled" to the residue of the deceased, or to a share therein, but in fact, except in the somewhat rare case of an infant marrying, no infant is entitled otherwise than contingently on attaining twenty-one on a post-1925 intestacy, see s. 47 (1) (i) and (3). The reconciliation of these two sections is not easy, but if s. 42 (1) is to have its full effect the word "absolutely" in the case of post-1925 intestacies must be construed "as absolutely as the law permits," and the opinion here given is that a judge would so hold. But, until there is a decision to this effect, it might be safer for the administrators to retain the share.

(*b*) Yes, and capital for advancement if desirable, see A.E.A., 1925, s. 47 (1) (ii), and the T.A., 1925, ss. 31 and 32, and also s. 69 (1).

(2) (*a*) and (*b*) Assuming the person *non compos mentis* is a lunatic within the definition in s. 341 of the Lunacy Act, 1890, the administrators, as trustees, may, under s. 299 (2), pay to the treasurer of the local authority to which the lunatic is chargeable money to recoup the charges in the section mentioned. Those charges under sub-s. (1) are the expenses of maintenance and incidental expenses respectively, incurred and to be incurred in relation to the lunatic, being money not required to maintain his family. If the lunatic is a bachelor, possibly this section will enable the administrators to deal with his share without invoking a court.

TRUSTEES FOR SALE—POWERS OF LEASING SUPPLEMENTAL TO THE S.L.A., 1925.

948. *Q.* Freehold property was conveyed to A and B (who are really partners) in December, 1926, as joint tenants in the form of conveyance contained in "Prideaux," 22nd ed., vol. 1, p. 652. A and B desire to grant a lease of ninety-nine years at an annual ground rent and afterwards sell the ground rent. Can they grant a lease for more than fifty years in view of s. 41 of the S.L.A?

A. If the conveyance included cl. 3 of the form referred to, it purported to give the trustees for sale, by reference to the S.L.A., 1925, s. 64, practically the powers of absolute owners, and, assuming its validity, they can grant the lease. As to its validity, there is nothing in ss. 23-33 of the L.P.A., 1925, to forbid the grant of extra-statutory powers to trustees for sale, and this in fact is implied as a possibility in s. 29 (1). See also T.A., 1925, s. 69 (2). The question is therefore answered in the affirmative.

PROPOSED VOLUNTARY SETTLEMENT OF LAND, THE SETTLOR RETAINING A LIFE INTEREST.

949. *Q.* What stamp duty would be payable on the following documents:—

(1) Vesting Deed.—Settlor, who is seventy-five years of age, vests a certain dwelling-house in trustees, who are to hold the property on certain trusts as declared in the trust deed?

(2) Trust Deed.—The settlor, in consideration of natural love and affection, vests the property in trustees on trust for herself for life, and on her death in trust for the settlor's grand-daughter, when she shall attain the age of twenty-one years or marry under that age, and in case of her death during the settlor's lifetime, then upon trust for the settlor's daughter absolutely?

The controller informs me that on the trust deed there will be a fixed duty of 10s. and *ad valorem* duty as it is a voluntary disposition. On the vesting deed there will be the fixed duty of 10s. Is this correct?

A. Settlements of land must now conform to ss. 4 and 5 of the S.L.A., 1925, and the above scheme must be modified accordingly. The *ad valorem* stamp under the F.A. (1909-10), 1910, s. 74, arising from the voluntary disposition of the reversion in the land subject to the settlor's life interest must be impressed on the trust instrument, see S.L.A., 1925, s. 4 (3) (*c*), and in any case, must be adjudicated, see F.A. (1909-10), 1910, s. 74 (2). It does not appear clear why, if the proper *ad valorem* duty is paid, there should be the further fixed duty stamp of 10s. on the trust deed, and the controller should explain this. The trust instrument, whether by deed poll or *inter partes* with the proposed trustees as parties to testify their consent to act, should be framed to satisfy the requirements of the S.L.A., 1925, s. 4, and should be by way of declaration by the settlor, not of conveyance to the trustees. The vesting deed should be *inter partes* between the trustees and the settlor, conforming with ss. 4 and 5, and be executed both by trustees and settlor. Forms 2 and 3 of the 1st Sched, to the Act may be adapted, or Form 240, p. 480, Enc. F. and P., 2nd ed., vol. XVI, which is a precedent of a voluntary settlement.

UNDIVIDED SHARES—TITLE.

950. *Q.* G.P., seised of a freehold house, died in 1895, intestate, leaving E.P., his heiress-at-law, as to half the property, and M.E., A.E., and E.E., three sisters, his heiresses-at-law, as to the other half. E.P. died in 1900, leaving a will under which she appointed S.W. sole executor and trustee,

and devised all her interest in the property to H.L. and James E., as tenants in common. The will was proved by S.W. in 1901. In 1919 the three sisters, M.E., A.E. and E.E., and James E. sold their half share and quarter share in the property, to a limited company. H.L., the owner of a quarter share in the property, by will, dated 1920, appointed two executors and trustees, and devised all her property to them upon trust for sale, and then for her nine children. This will was proved in 1924 by the two executors. It is understood that all the nine children of H.L. are of full age, and that none have incumbered their shares. The limited company now wish to buy the outstanding quarter share, and the question arises as to who should convey? The executors of H.L.'s will claim to sell as personal representatives, saying that they have not assented to the gift to the nine children. Please advise who should convey, and what, if any, effect it will have on the parties if some of the nine children are infants.

A. In order to make the first statement above accord with English law, it must be assumed that the mother of M.E., A.E. and E.E. would, if she had survived G.P., have been his co-heiress with E.P., the position then being regulated in accordance with the doctrine of *re Matson*, 1897, 2 Ch. 509. Further, assuming that the estates of G.P. and E.P. were fully administered before 1919, the property on 1st January, 1926, was vested as to three undivided shares in the company, as to one in H.L.'s executors, or alternatively, if they had cleared the estate, in the same individuals, not as executors, but as Trustees for sale. This being so, the L.P.A., 1925, 1st Sched. Pt. IV, para. 1 (4), operated to vest the property in the Public Trustee upon trust for sale. The company, with such trustees and executors, if they think fit, may appoint new trustees for sale under para. 1 (4) (iii), who can sell to the company. Or, preferably, the company can buy up H.L.'s equitable interest from his executors, or trustees, and can then give title as indicated in the answer to *Q.* 244, p. 541, vol. 70, after appointing themselves sole trustees under para. 1 (4) (iii).

Proceeds of Sale of Settled Land in hands of Trustees —Devolution.

951. *Q.* R died in 1891 having by his will devised a freehold house to J, for life, and should she die without issue then to A, his heirs and assigns. A died in 1900 having by his will devised and bequeathed all his real and personal property equally between such of his children living at his death as should attain the age of twenty-one years. He left two sons, both of whom attained twenty-one, but one of whom died in 1914. In 1920 J sold the house as tenant for life and the purchase money was paid to trustees appointed under the S.L.A. and invested by them. J died in 1927, and it seems that after payment of duty the S.L.A. trustees should hand over the money in their hands to A's executor, who should in turn (after payment of duty in A's estate), divide it between the surviving son and the personal representatives of the deceased son, there being no possibility of the money passing to A's eldest son as realty. Is this view correct?

A. Yes. On 31st December, 1925, the trustees of the settlement created by R's will held, not land, but money investments, which were not "land" within the S.L.A., 1925, s. 117 (1) (ix), and were not therefore affected by the Act. The opinion is here expressed that the reversion passed under the residuary devise of realty in A's will, but since his residuary personalty was bequeathed similarly, the distinction is not important.

Extinguishment of Manorial Incidents—Annual Value —Basis of Assessment—L.P.A., 1922, 13th Sched., Pt. II, paras. 3, 4—Manorial Incidents (Extinguishment) Rules, 1925, Pt. VII, para. 64, rr. 3 & 4.

952. *Q.* As steward of the manor I have been asked as to the terms upon which the lady of the manor will agree the amount of compensation to be paid for the extinguishment of manorial incidents. I find that the property is let under a lease at a rental of £90 per annum, the landlord doing outside repairs, and the tenant inside repairs. The gross Schedule A tax, is only £50. Can the lady of the manor insist upon the compensation being calculated upon the amount of the annual rent as representing the annual value of the property less one-fifth on account of tenant's repairs, or must it be based on the gross Schedule A assessment, *vide* Pt. 7 (3) of Manorial Incidents (Extinguishment) Rules, 1925.

A. Rule (3), *supra* (which is identical with the L.P.A., 1922, 13th Sched., Pt. II, para. 3), provides that the gross annual value as assessed for the purposes of Schedule A of the Income Tax Act, shall be used as the basis for ascertaining the compensation "save as hereinafter provided, and unless the Minister for any special reason otherwise directs." This direction is immediately followed by a proviso as to assessment by an agreed valuer, and r. (4) (para. 4 of the 13th Sched., Pt. II, *supra*), provides that land with facilities for improvement or present or prospective building value shall be assessed on a different basis. Rule (3) therefore is imperative as to the Schedule A valuation as the basis, unless some subsequent provision lifts the case out of such basis. If the land comes under r. (4), r. (3) is excluded. The question remains whether a valuer appointed under the proviso to r. (3) is bound by such basis. The learned author of "Wolstenholme and Cherry's Conveyancing Statutes," appear to be of opinion that he is, see note to para. 3, p. 79, where "save as hereinafter provided" is stated to refer to para. 4 only. The matter could only be tested after a valuer had made an award under the proviso, in proceedings to set aside such award on the ground that the valuer had misdirected himself on the point of law. Meanwhile, if the lady of the manor wishes to exclude the Schedule A basis, she must (in default of agreement as to value), require an agreed valuer or one to be appointed by the Minister. If he considers that he is not bound by Schedule A as a basis of valuation, the lady of the manor will no doubt be satisfied, and it will be for the tenant to take the legal point.

Mortgage—Mortgagee's Consent Required to Sale of Equity—Validity.

953. *Q.* In connexion with conveyances of equities of redemption we have found in practice that sometimes a vendor sells property, subject to a mortgage, to a purchaser who is not a responsible person, with the result that the lender and his solicitors are often put to considerable trouble and expense in collecting the interest and fire insurance premiums. With a view to minimising this difficulty and as a protection to the lender we propose to insert the following clause in mortgages which we prepare: "The borrower shall not convey the equity of redemption in the said premises to any person without first obtaining the consent of the lender and the costs of the solicitors for the lender in connexion therewith shall be paid by the borrower. Provided that such consent shall not be unreasonably or vexatiously withheld, and the personal representative of the borrower shall within six months of the grant of probate or letters of administration to themselves register such grant with the lender's solicitors and pay such solicitors' fee of 10s. 6d. for such registration." We shall be much obliged if you will kindly state whether in your opinion such a clause is valid, and not likely to be construed as a clog on the equity of redemption, and if you consider any objection could be taken to its use?

We should like to mention that we know of no precedent or case which deals with the point, and if there is any such we shall be glad to have the reference.

A. The proposed clause in no way fetters the right to redeem, and is not therefore in the nature of a clog. It somewhat fetters the mortgagor's right to deal with his property during the subsistence of the mortgage, but the opinion is here given that it does not violate the three rules laid down by Lord Parker in *Kreglinger* v. *New Patagonia*

Meat Co., 1914 ,A.C. 25, at p. 61, and would be upheld by a court. Since a mortgagee on an assignment of the freehold subject to the mortgage term loses his rights neither against the land nor the mortgagor, such a clause does not hitherto appear to have been deemed necessary. And the borrower's personal representatives would in the ordinary course and as part of their duty send the probate to the mortgagee's solicitors in proof of their title to redeem, and the latter would be entitled to charge a reasonable fee for their trouble.

LAND HELD BY ONE PERSON ON AN UNDISCLOSED TRUST, EITHER PRE-1926 OR POST-1925.

954. *Q.* (1) By separate conveyances Blackacre and Whiteacre were conveyed before 1926 to A, in fee simple without any declaration of trust, but in fact in (secret) trust for A, B and C, It is presumed that on the 1st January, 1926, the legal estate thereunder became vested in A, B and C. They are now desirous of dividing the property amongst themselves, A taking Blackacre, and B and C taking separate conveyances of parts of Whiteacre.

(*a*) Can Blackacre, standing as it does in A's name, be treated as his property without any conveyance, B and C giving him an informal acknowledgment of having no interest in the property? This seems improper, as A's interest, *quâ* trustee, ceased on 1st January, 1926?

(*b*) It is presumed that the division of Whiteacre must be effected by conveyances in which A, B and C are grantors as tenants in common upon the statutory trusts for sale and B and C are separate grantees.

(2) The facts are similar to those in (1), except that the original conveyances are post-1925. The transitional provisions of the L.P.A. appear to relate to pre-1926 secret trusts only. Does a post-1925 conveyance to A, in fee simple, but upon a secret trust for A, B and C, operate *ipso facto* to vest the legal estate in A, B and C, and, if so, under what section of the L.P.A., 1925?

(*a*) If it does, it is presumed the division can be carried out in the way deemed appropriate for the cases mentioned under heading (1).

(*b*) If not, it is apprehended that A will have to do nothing to vest Blackacre in himself, except protect himself with an acknowledgment from the other two that they have no interest in the property, and that in the case of Whiteacre, A will simply convey its agreed parts to the other two separately, in satisfaction of their shares.

A. (1) The situation is regulated by the L.P.A., 1925. 1st Sched., Pt. II, paras. 3 (as amended by the L.P. (Am.) A., 1926, Sched.), and 6 (*b*).

(*a*) No. A can, of course, give title if he refrains from disclosing the trust, but this would not be a proper course to take, and B and C cannot divest themselves of any interest in land by an informal acknowledgment (see L.P.A., 1925, s. 52 (1)). A, B and C are trustees for sale and equitable owners. A should purchase the shares of B and C, accepting conveyance by deed, and A, B and C should then convey the legal estate to A.

(*b*) The apportionment to B and C may be effected as above, or, alternatively, the power to partition under s. 28 (3) may be invoked. The latter plan would probably involve a saving in *ad valorem* stamp duty, and may therefore be regarded as preferable.

(2) A post-1926 conveyance to A without disclosure of any trust has the same effect as it had under the old law, namely, that the trust does not affect a purchaser without notice, but binds the conscience of a grantee and is enforceable in equity accordingly. Since A can no longer hold upon trust for himself and B and C as tenants in common, A holds on trust for sale under the L.P.A., 1925, s. 36 (1), and the opinion is here given that he can exercise his powers under s. 28 (3), *supra*, without appointing a co-trustee, for any equality money he may receive will be received as beneficial owner, and not as trustee.

SETTLED LAND—TENANT BY THE CURTESY—DEATH—TITLE.

955. *Q.* A married woman died intestate in 1914 seised of two freehold houses. She was survived by her husband and a son (the heir-at-law) and other children. The husband took out letters of administration and received the rents of the houses as tenant by the curtesy until his death in 1926, but no conveyance or assurance of these houses was ever made. He left a will appointing a trust corporation executor and trustee, and a general grant of probate has been obtained by such corporation. At the time the grant was made it was not realised that the two houses might be vested in the husband as settled land and in the oath for probate it was stated that there was no settled land. The son now desires to sell. What steps are required to vest the houses in him for the purpose? Can the executors of the father's will execute a vesting assent, or must they first obtain a special grant of administration in respect of the two houses.?

A. In the circumstances above a court would imply the assent of the husband as administrator to the wife to the devolution of the property (as tenant by the curtesy), with remainder to the heir under the doctrine of *Wise* v. *Whitburn*, 1924, 1 Ch. 460. This being so, the land was settled land both under the old law and the new, s. 20 (1) (vii), and (3) of the S.L.A., 1925 being the new provision applicable. On 1st January, 1926, the husband as tenant by the curtesy took the legal fee simple, see L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), together with s. 205 (1) (xxvi), and the S.L.A., 1925, s. 117 (1) (xxviii). Under the S.L.A., 1925, s. 30 (3) he was also trustee of the settlement for the purposes of the Act, and in the circumstances the trust corporation should apply for probate in respect of the settled land. If and when granted to them, they should pay or provide for the death duties, and, if the son sells, convey as he shall direct, see S.L.A., 1925, s. 7 (5).

FENCE—OBLIGATION TO REPAIR—WHETHER RESTRICTIVE COVENANT.

956. *Q.* B attends a sale by auction of D's property, which is the subject of certain restrictive covenants, one of which makes it incumbent on D to fence. The land is sold subject to certain conditions, and also to the National Conditions of Sale (Seventh Edition), No. 9 (3) of which states: "A purchaser shall be deemed to buy with full notice in all respects of the actual state and condition of the property sold, and shall take the property as it is," and also No. 7 (2) which states that: "the restrictive covenants may be inspected at the office of the vendor's solicitors, and the purchaser (whether he inspects the same or not) shall be deemed to have purchased with full knowledge thereof." B did not intend to purchase, but made a low bid, which was accepted. In view of his intention not to purchase, he had not inspected the restrictive covenants, nor the land, and it afterwards transpired that no fencing had been done. He is quite prepared to complete his purchase in the usual way, but D refuses to fence. B objects to fencing on the principle that D cannot evade his liability to fence by selling to B, without making known to B before the sale, in his conditions, the fact that he (D) has not observed his special covenant. In other words, on the ground that B cannot absolve D from his liability. Can B sustain his objection? In the alternative, can B refuse, in view of D's non-performance of the covenant, to give the usual indemnity in his purchase deed?

A. Primâ facie, a covenant requiring money to be spent is not a restrictive covenant within the equitable doctrine of *Tulk* v. *Moxhay*, 1848, 2 Ph. 774, see *Austerberry* v. *Corporation of Oldham*, 1885, 29 C.D. 750. But a covenant to keep a fence repaired was one which apparently could run with the land at law, see *Lawrence* v. *Jenkins*, 1873, L.R. 8 Q.B. 274, being described as a "spurious easement," see also *Boyle* v. *Tamlyn*, 1827, 6 B. & C. 329, pp. 338-9, and *Coaker* c. *Willcocks*, 1911,

2 K.B. 124. Probably such a right would continue to exist under the L.P.A., 1925, s. 1 (2) (*a*), and for the purposes of this question it must be assumed that the obligation to fence is binding (subject of course to any question of acquiescence or defence under the Statutes of Limitations). This being so, B expressly bought under the contract with notice both of the "restrictive covenants," and of the state of the property, including of course the want of repair of the fence the subject of the covenant. Although the covenant to fence was not strictly a "restrictive covenant," it would no doubt have been included in those disclosed, and the opinion is therefore here given that B is bound by the contract and cannot sustain his objection.

PRE-1926 MORTGAGE—MEMORANDUM OF TRANSFER—MORTGAGE SECURED BY TITLE DEEDS—TITLE OF TRANSFEREE.

957. *Q.* By a mortgage, dated the 13th December, 1913, A charged certain property for securing payment to B of £1,000 and interest, and by a further charge, dated the 7th July, 1914, A further charged the property with payment of the sum of £200 and interest in favour of B. B on the 14th March, 1916, signed a memorandum to the effect that C was entitled to the sums of £1,000 and £200 intended to be secured by the mortgage and further charge. The title deeds were handed to C, who has been receiving the interest since 1916. B died some years ago. A has recently died, and it is now desired to pay off the mortgage.

Will you kindly say whether C is in a position to sign the statutory receipt as mentioned in the L.P.A., 1925, s. 115, or must C first obtain a transfer to herself of the mortgage and further charge from B's personal representatives?

A. The answer to this question must depend on whether the mortgage was by way of conveyance, in the usual form, or merely an equitable charge with deposit of deeds. If the former, and the memorandum in C's favour was not under seal, it would not operate as a conveyance, see Real Property Limitation Act, 1845, s. 3 (now superseded by the L.P.A., 1925, s. 52). If it was under seal, the issue whether it operated as a conveyance of the legal estate would depend on the form of it, but, *primâ facie*, a mere memorandum would not suffice. However, whether so or not, the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*a*) would operate to vest the legal estate in the term created by Pt. VII, para. 1, in C, who would then be in a position to sign the statutory receipt. If, on the other hand, the mortgage was by way of equitable charge only, with deposit of deeds, C is protected by s. 13 of the Act, and his signature of the receipt and delivery of the deeds will operate to discharge his equitable rights, though not under s. 115, because the property is not vested in him for a mortgage term. In either case C should hand B's memorandum of transfer in favour of him, C, to A's personal representatives.

House of Lords.

Baker *v.* **Archer Shee.** 26th July.

INCOME TAX—FOREIGN SECURITIES—FOREIGN POSSESSIONS—DIVIDENDS NOT REMITTED TO UNITED KINGDOM—INCOME TAX ACT, 1918, Sched. D, Case IV, 1; Case V, 1, 2.

A beneficiary under a foreign will who was resident in England and was entitled to receive the net income of foreign stocks, shares and securities in the hands of foreign trustees was held by the Court of Appeal to be assessable to income tax on the income actually remitted to this country only, and not on the full amount of such income.

Held, allowing the appeal, that the case be referred back to the Commissioners to re-state the case by giving further particulars.

By his will, Alfred Pell, a citizen of the United States and father of the respondent's wife, left the residue of his property in trust for his daughter during her life. The trustees, who had full power over the investment of the trust fund, were the Trust Company of New York. The trust fund, as stated in the case, consisted of "foreign government securities, foreign stocks and shares and other foreign property." The trustees paid over such part of the sums they received from the trust fund as they considered to be income to the respondent's wife, while retaining such sums as they might require to comply with the income tax or other provisions of American law. The respondent, who was resident in the United Kingdom, did not dispute his liability under the Act on his wife's income actually received in this country, and contended that such income was income arising from a foreign possession within r. 2 of Case V. No part of the income in question was in fact remitted to this country. Rowlatt, J., held that the respondent was chargeable with income tax under Sched. D, Case V, r. 1, in the full amount of the income of the trust fund. The Court of Appeal, reversing his decision, held that the income fell to be taxed under Case V, r. 2, as income arising from possessions out of the United Kingdom other than stocks, shares and rents.

Lord WRENBURY said the question for determination was what was the nature of the property. Was it a "possession out of the United Kingdom other than stocks, shares or rents" within Case V, r. 2? To escape taxation the respondent must establish that it was. In the case stated by the Commissioners there was no finding what was the American law in the light of which the construction of the will was to be ascertained. The Court of Appeal did not appear to have considered the matter and treated the question for decision as purely a question of fact. The question was not what the trustees thought proper to hand over, which was a question of fact, but what under the will Lady Archer Shee was entitled to, which was a question of law. The trustees, of course, had a first charge upon the trust fund for their costs, charges and expenses, and American income tax would be a tax which they would have to bear and which would fall upon the beneficiary. But that did not reduce the right of property of the beneficiary to a right only to a balance sum after deducting those sums. Under the will, Lady Archer Shee, if American law was the same as English law, was as a matter of construction entitled in equity specifically during her life to the dividends on the stocks and shares. If such a property was not taxable a person residing here could, by creating a foreign trust of stocks and shares and accumulating or spending the income abroad, escape taxation. In his judgment the appeal should be allowed, and, in the absence of particulars as to the nature of the "foreign government securities, foreign stocks and shares and other foreign property," the matter should be referred back to the Commissioners for further particulars under the respective heads of Case IV (1), Case V (1) and Case V (2).

Lord ATKINSON and Lord CARSON delivered judgment to same effect.

Lord SUMNER and Lord BLANESBURGH delivered dissenting judgments.

COUNSEL: *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills*; *Maugham*, K.C., and *Edwardes Jones*, K.C.

SOLICITORS: *Solicitor of Inland Revenue*; *Boulton, Sons and Sandeman.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Rex *v.* **Commissioners of Customs and Excise: *Ex parte* Pegler.**

20th and 21st July.

LICENSING LAW—LICENCE FOR SALE OF INTOXICATING LIQUOR—TIED HOUSE—INCREASE OF DUTY—APPORTIONMENT OF INCREASE BETWEEN LANDLORD AND TENANT—DUTY OF COMMISSIONERS TO DETERMINE PROPORTION—STATUTE APPLICABLE TO AGREEMENTS IN EXISTENCE AT DATE OF PASSING ONLY—FINANCE (1909-10) ACT, 1910, 10 EDW. 7, c. 8, s. 46.

Under the Finance (1909-10) *Act*, 1910, *an increased duty was imposed on licences to sell intoxicating liquor, and by s. 46 in the case of tied houses the tenants of which are bound by any covenant or agreement to obtain their supply of intoxicating liquor from any person or persons, the licence-holder may recover from such person such proportion of the increase of duty as may be agreed on, or in default of agreement shall be determined by the Commissioners of Customs and Excise.*

Held (*Scrutton, L.J., dissenting*), *that the section applies only to the case of covenants or agreements in existence at the date of the passing of the Act, and not to any entered into after such date.*

Appeal by the licensee Pegler, from a decision of the King's Bench Division (Avory and Talbot, JJ., Swift, J., dissenting), discharging a rule nisi for a writ of *mandamus* directed to the Commissioners of Customs and Excise commanding them to hear and determine the proportion of the increased duty payable in respect of the appellant's licence under s. 46 of the Finance (1909-10) Act, 1910. Mr. Pegler contended that the Commissioners were bound to hear his application. The Commissioners contended that the section related only to covenants, agreements and licences in existence at the date when the Act was passed. By s. 46 of the Finance (1909-10) Act, 1910: "Where a licence-holder is bound by any covenant, agreement or undertaking, or is otherwise under any direct or indirect obligation of any kind, to obtain a supply of intoxicating liquor from any person or persons, the licence-holder shall be entitled, notwithstanding any agreement to the contrary, to recover as a debt due from or deduct from any sum due to any such person so much of any increase of the duty payable in respect of his licence occasioned by this Act as may be agreed upon, or in default of agreement determined by the Commissioners to be proportionate to any increased rent of the licensed premises or increased prices of intoxicating liquor supplied, or other benefit obtained by such person by reason of any such covenant, agreement, undertaking, or obligation as aforesaid."

Mr. Pegler originally became tenant of the City Arms, Gloucester, from Messrs. Arnold, Perrett, and Co., Limited, under a lease dated 31st August, 1911, containing a covenant by the tenant to pay: "all rates, tithes, taxes, charges, assessments, duties, and outgoings, whatsoever, whether Parliamentary, parochial, local or of any other description which are now or may at any time hereafter be assessed, charged or imposed upon the said demised premises, or the owner or occupier in respect thereof, the landlord's property tax alone excepted." There was also a covenant to purchase all liquor from the landlords. The lease was renewed to Mr. Pegler on 5th April, 1912; to Mr. Pegler and his wife (owing to his war service) on 4th November, 1916; and to Mr. Pegler on 5th March, 1920, that being the subsisting lease and containing the same material covenants as the original lease. On 28th April, 1926, Mr. Pegler, by his solicitors, applied to the Commissioners to determine the proportion of the increased licence duty payable under the Finance (1909-10) Act, 1910. The Commissioners declined to do so on the ground that the section only applied to agreements in existence at the date of the passing of the Act. Mr. Pegler then obtained a rule nisi for a mandamus. The Divisional Court, Swift, J., dissenting, discharged the rule, holding that the section only applied to agreements and covenants by licence-holders which were in existence when the Act was passed. The licensee appealed.

Lord HANWORTH, M.R., said that s. 46 dealt with the case of the tied tenant. It was intended to meet the new situation and to mitigate the difficulties which might thereby arise to tied tenants under existing tenancy agreements. It opened with words which were agreed on by all parties to be colourless. They might be operative at any time or they might be restricted to leases in existence at the date of the Act. The court must look at the context to ascertain the meaning of the opening words. In his opinion the object of the section was to restore freedom of contract and to leave the parties free to deal by agreement with a situation which, neither of them could have contemplated. The words "notwithstanding any agreement to the contrary" obviously reopened the matter as between the parties. The words "any increase of the duty payable in respect of his licence occasioned by this Act" appeared to refer to matters introduced or brought about by the Finance Act, 1910. The parties might agree if they could; if not the matter must be determined by the Commissioners, upon certain principles, proportionately to the increased rent of the premises or the increased prices of liquors. If the section were to apply to agreements entered into after the Act was passed it would give an opportunity to the tied tenant to re-open a contract which he had entered into with full knowledge of the provisions of the Act. The words of Baron Parke in *re Knight*, 1 Ex., 802, in which he said that the words of an Act might be reasonably construed to mean "notwithstanding any agreement to the contrary subsisting between the parties at the time of the passing of the Act" were applicable. He (his Lordship) had found no assistance from the cases which had been cited: *Wooler* v. *North-Eastern Breweries*, 1910, 1 K.B. 247, and *Watney, Combe, Reid & Co., Limited* v. *Berners*, 1915, A.C. 885. It was suggested that some assistance might be afforded by s. 2 of the Finance Act, 1912, since repealed. The observations of the Solicitor-General were well founded, that, if the construction contended for by the appellant was right, it would have been necessary in 1912 not only to provide for cases of agreements made before the passing of the Act of 1910, but also for cases where leases or agreements had been made since 1910—and that the Act of 1912 did not do. The interpretation which he (his Lordship) thought that the Finance (1909-10) Act, 1910, ought to bear brought it into line with s. 2 of the later Act. Beyond that he could get no assistance from the later Act. The purpose, he thought, of s. 46 was to restore freedom of contract in those cases where it was necessary to restore it. After the passing of the Act the parties were free to contract how the licence duties should be borne. The appeal should be dismissed, with costs.

SCRUTTON, L.J., delivered a long dissenting judgment, holding that he must construe the plain words of the section, without making any assumption as to its policy, per Lord Sumner in *Watney, Combe, Reid & Co.* v. *Berners*, *supra*, and that the ordinary meaning of the words "is bound" in the section was "is bound when the case comes before the Commissioners to determine it." There was no presumption that Parliament was not interfering with liberty of contract; it had frequently done so as between landlord and tenant. The appeal ought to be allowed.

SARGANT, L.J., delivered judgment in agreement with the Master of the Rolls.

COUNSEL: *Roland Burrows* and *H. Palmer*; *Sir Thomas Inskip*, K.C., S.-G., *and Bowstead*; *Mitchell Banks*, K.C., and *Croom-Johnson*, K.C.

SOLICITORS: *Maitland, Peckham & Co.*, for *Lane, Martin and Co.*, Gloucester; *Solicitor of Customs and Excise*; *Godden, Holme & Ward* for *Haddock & Pruen*, Cheltenham.

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Britannic Assurance Co., Ltd. and The Assurance Companies Act, 1909.** Eve, J. 13th July.

ASSURANCE COMPANIES—AMALGAMATION—DISPENSING WITH TRANSMISSION OF DOCUMENTS TO POLICY-HOLDERS—ADVERTISEMENTS—ASSURANCE COMPANIES ACT, 1909, s. 13, sub-s. (3) (*b*).

Upon an application to the court to sanction an agreement for the amalgamation of two assurance companies, the court will in a proper case dispense with the transmission to the policy-holders of the reports and documents referred to in s. 13, *sub-s.* (3) (b) *of the Assurance Companies Act*, 1909, *and will direct advertisements to be issued in lieu thereof.*

This was a petition by the directors of the Britannic Assurance Co. asking that an agreement for amalgamation with the British Legal Life Assurance Co. might be sanctioned by the court. On 21st February, 1927, an agreement was entered into for amalgamation of the two companies and a supplemental agreement on 3rd June, 1927. The consideration for the amalgamation was the discharge of all the debts of the British Legal Life Co., which was to be taken over as a going concern. The directors were to be paid a sum for loss of office, and the shareholders were to receive 15s. cash and £1 preference share in the Britannic Co. for every £1 share in the British Legal Life Co., and also a reversionary bonus of £1 per £100 assured per annum as from 31st December, 1926, to 31st December, 1933. The Britannic Co., as from the completion of the transfer, were to take over the whole of the staff of the British Legal Life Co. on the terms of their engagements with the latter company. On 11th June, 1927, a procedure summons was taken out on behalf of the directors of the Britannic Company asking (1) that the requirements of para. (*b*) of sub-s. (13) of the Assurance Companies Act, 1909, as to transmission to the policy-holders of the two companies of the reports and other documents referred to in the said paragraph might be dispensed with; (2) that directions for advertising the petition and the day of hearing thereof, and also for advertising the effect of the agreements for amalgamation, might be given. It was estimated that the cost of preparing and printing the documents above referred to and posting the same to the policy-holders would amount to over £60,000. On 22nd June, the summons came on for hearing before the judge, who made an order as asked, by which it was ordered that the transmission of the documents referred to in s. 13, sub-s. (3) (*b*), to the policy-holders be dispensed with and that in lieu of such transmission an advertisement in the form set forth in the schedule thereto be inserted three times in the "London Gazette" and in six other named newspapers, and that the period of fifteen days mentioned in s. 13, sub-s. (3) (*c*), should run as from the date of the first insertion of the advertisement in the "London Gazette." On 13th July, 1927, the petition came on for hearing. There was no opposition by any one in connection with the Britannic, but notice of opposition had been received on behalf of two agents of the British Legal Life Co., who claimed to represent 160 agents and employees and certain dissenting policy-holders, claiming to represent 35,000 (out of a total of 940,000) policy-holders of the latter company. It was contended that no notice had been given directly to the policy-holders, and that the agreement for transfer was *ultra vires*.

EVE, J., said that the objections taken to the amalgamation were untenable. The agents of the British Legal Life Co. were to be in exactly the same position as before the agreement. The statutory requirements had been complied with, and the agreement for amalgamation would be sanctioned as asked by the petition. The costs of the opposing policy-holders and agents would be provided for by the petitioning company.

COUNSEL: *Luxmoore*, K.C., and *R. Peel*; *Grant*, K.C., and *C. W. Turner*; *C. L. Fawell*; *F. Foley*.

SOLICITORS: *Kingsley Wood, Williams & Co.*, for *F. G. Cooper*, Birmingham; *Peter Thomas & Clark*; *Vizard, Oldham, Crowder & Cash*, for *Berry & Berry*, Manchester; *Treasury Solicitor*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Gleed *v.* **Gleed.** Lord Merrivale, P. 27th June.

DIVORCE—MAKING ALLEGED ADULTERER CO-RESPONDENT—DISPENSATION APART FROM "SPECIAL GROUNDS"—MATRIMONIAL CAUSES ACT, 1857, 20 & 21 Vict. c. 85, s. 28—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 177.

A petitioner may be dispensed, apart from "special grounds," from making an alleged adulterer a co-respondent.

Summons adjourned into court.

This was an application by a petitioner, suing as a poor person, for an order that he might be dispensed from making the alleged adulterer a co-respondent. The facts appear from the judgment.

Lord MERRIVALE, P., said that this was an application by the petitioner to be relieved from some of the difficulties arising out of the provisions contained in s. 28 of the Matrimonial Causes Act, 1857, now embodied in the Judicature (Consolidation) Act, 1925, s. 177, whereby a peremptory obligation was imposed on a husband petitioning in divorce to make the alleged adulterer a co-respondent, unless, on special grounds to be allowed by the court, he should be excused. That matter had given rise to difficulties. Questions of the same kind were constantly coming before the registrars and he had therefore adjourned the summons into court. The petitioner in 1923 received an admission from his wife that she had been guilty of adultery with one Bert Morgan during that year while she had been staying at a boarding-house at Brighton. The petitioner had no knowledge of the identity of Bert Morgan, and, if he had known anything about him, probably he would not have discovered his whereabouts after the long interval which elapsed before he became aware of the Poor Persons' Department and was in a position to take any steps. Unless special grounds could be established to the satisfaction of the court, the petitioner could not proceed without making a co-respondent. He (his lordship) had come to the conclusion that it would be a denial of justice in the circumstances to insist on the usual procedure. The petitioner might have been given leave to serve Bert Morgan by substituted service by way of advertisement, but the alleged adulterer was said to be in Australia, and it would be difficult to know in what State of that Commonwealth and in what newspapers such an advertisement could be inserted to be effective. The precautionary provisions in the statutes were not intended to prevent or impede the administration of justice but to secure a proper observance of the law as to collusion and other matters. He saw no advantage in putting the petitioner to the expense of advertising either in England or in Australia, and he directed that, on the facts of the case, the petitioner should be dispensed from making the alleged adulterer a co-respondent.

Counsel for the petitioner applied to amend the petition by alleging adultery with a man unknown.

Lord MERRIVALE, P., said that that would not be the right order after the petitioner had been dispensed from making the alleged adulterer a co-respondent. No amendment was required.

COUNSEL for the petitioner: *G. Tyndale*.

SOLICITORS: *Tarry, Sherlock and King*, for *Townsend, Wood and Calderwood*, Swindon.

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

The Law Society.

ANNUAL PROVINCIAL MEETING.

The forty-fourth annual provincial meeting of The Law Society will take place at Sheffield on Monday the 26th to Thursday the 29th September inclusive, and in connexion therewith a detailed programme of arrangements has been issued by Mr. C. Stanley Coombe, Hon. Secretary, Sheffield District Incorporated Law Society, containing the following information :—

CIVIC RECEPTION.

On Monday, the 26th, the Lord Mayor of Sheffield (Alderman J. G. Graves) and the Lady Mayoress will hold a reception at the town hall, at 8 p.m., to which the president, council and members of The Law Society attending the meeting, and the ladies accompanying them, are invited. There will be music and dancing, and carriages may be ordered for 11 p.m.

PRESIDENTIAL ADDRESS.

On Tuesday, the 27th, the members will be welcomed in the council chamber, town hall, by the Lord Mayor of Sheffield, at 10.30 a.m. The President of The Law Society (Mr. Cecil Allen Coward, London) will deliver his inaugural address, which will be followed by the reading and discussion of papers contributed by members of the Society. The meeting will adjourn for luncheon from 1.30 to 2.30 p.m., after which the reading and discussion of papers will be resumed, the meeting closing at 4.30 p.m.

BANQUET.

There will be a banquet at the Victoria Hotel in the evening. Members of the Society will be received at 7 p.m. by Mr. Edward Bramley (President of the Sheffield District Incorporated Law Society), who will preside at the banquet. Carriages may be ordered for 10.30 p.m.

SOLICITORS' BENEVOLENT ASSOCIATION.

On Wednesday, the 28th, the annual general meeting of the Solicitors' Benevolent Association will be held in the council chamber, town hall, at 10.15 a.m.

READING OF PAPERS.

The reading and discussion of papers will be continued at 10.45 a.m. on Wednesday, and at 1.15 p.m. the business of the meeting will close.

VISITS TO WORKS, ETC.

On Wednesday, members will have the choice of the following visits—'(*a*) To the River Don Works of Messrs. Vickers, Limited, at 2 p.m.; (*b*) to the works of Messrs. Walker and Hall, Limited, at 2 p.m.; (*c*) to the new Central Telephone Exchange (automatic) at 2.30 p.m. (*a*) The party for Messrs. Vickers' works will meet outside the Grand Hotel, Leopold-street, where conveyances will be in waiting to take them to the works. (*b*) Messrs. Walker & Hall's works are in Howard-street, close to the town hall, and visitors will proceed on foot to the main entrance to the works, where they will be received by representatives of the firm. (*c*) The Telephone Exchange is also centrally situated, and visitors will proceed on foot to the Bow-street entrance (about two minutes' walk from the town hall) and be met by representatives of the Post Office. Both Messrs. Vickers, Limited, and Messrs. Walker & Hall, Limited, invite those of the visitors who are able to do so to take afternoon tea at their works. Members, however, intending to be present at the Degree Ceremony at the University later in the afternoon will not have time to remain for tea at the works, and are recommended to avail themselves of the invitation of the Vice-Chancellor to take tea in the refectory of the University after the ceremony. Special conveyances will be waiting outside the works to convey them to the University immediately after they have finished their inspection. Members visiting the Telephone Exchange will find it more convenient to proceed to the University by electric tram. All trams going up the hill past the Exchange pass close to the University, the journey taking approximately ten minutes.

The Yorkshire Board of Legal Studies is holding its annual general meeting at the University, Western Bank, at 3.15 p.m., on this (Wednesday) afternoon, and any members who may be specially interested in legal education are cordially invited to be present.

DEGREES FOR LORD HEWART AND OTHERS.

A Degree Congregation will be held at the University of Sheffield, Western Bank, at 4.15 p.m., on Wednesday, when honorary degrees will be conferred by the Vice-Chancellor, among them being the degree of LL.D. on Lord Hewart (Lord Chief Justice of England), the President of The Law Society, the President of the Sheffield District Incorporated Law Society, and Sir William Hart (Town Clerk of Sheffield). Afternoon tea will be provided for the company in the refectory at the invitation of the University.

THEATRE.

Seats have been reserved at the Lyceum Theatre, Tudor-street, by the Sheffield Law Society for their guests, for the performance of "Aloma," a play of the South Seas, by John B. Hymer and H. Le Roy Clemens, on Wednesday, at 8 p.m.

EXCURSIONS.

On Thursday, the 29th, there will be three alternative excursions, as follows :—No. 1, "A TOUR OF THE SHEFFIELD WATER SYSTEM," under the leadership of Mr. Edward Bramley. The party will assemble at the town hall (Surrey-street entrance) at 9.15 a.m., leaving at 9.30 a.m. by private cars for the Underbank and Langsett Reservoirs, and thence by Emden Bridge, Dale Dike and Strines Reservoirs, and Lady Bower, to the Rising Sun Hotel, at Hope, where lunch will be taken. In the afternoon the party will proceed through Derwent Village to the Upper Derwent, and inspect the Derwent and Howden Reservoirs of the Derwent Valley Water Board, thence to the Maynard Arms, Grindleford, for tea, arriving back at Sheffield at about 5.30 p.m. (Note.—Visitors wishing to catch an afternoon train can be taken back to Sheffield immediately after lunch, arriving in Sheffield at about 3 p.m., or, after visiting Howden Reservoir, arriving in Sheffield about 4.30 p.m.) No. 2, "THE DUKERIES," under the leadership of Mr. W. Mackenzie Smith. The party will assemble at the town hall (Norfolk-street entrance) at 10 a.m., leaving at 10.15 a.m. for Edwinstowe by Cuckney and Church Warsop, and passing Birklands Forest and Parliament Oak, and thence on to Ollerton, where lunch will be provided at the Hop Pole Hotel. After lunch the party will drive through Clumber Park and visit Clumber Chapel (by permission of the Duke of Newcastle). Proceeding from Clumber to Welbeck the party will inspect the grounds and the underground apartments (by permission of the Duke of Portland). Tea will be provided at Worksop, at 5 p.m., after which the party will return to Sheffield, arriving about 6.45 p.m. (Note.—Visitors desiring to do so will be able to catch a train from Worksop (L.N.E.R.), at 5 p.m., arriving in Sheffield at 5.22 p.m.) No. 3. "BEAUTIFUL DERBYSHIRE," under the leadership of Mr. C. Stanley Coombe. The arrangements for this excursion have been made in conjunction with the Buxton and High Peak Law Society. The party will assemble at the town hall (Surrey-street entrance), at 10 a.m., leaving at 10.15 a.m. for Buxton, by Fox House, The Surprise, Hathersage, Hope, Edale, Chapel-en-le-Frith, and Whalley Bridge. Lunch will be taken at Buxton. After lunch the party will leave for Chatsworth, by Taddington, Bakewell, Haddon Hall and Rowsley. From Chatsworth the party will proceed to Baslow for tea, and return to Sheffield at about 6 p.m.

SMOKING CONCERT.

A smoking concert will be held at the Cutlers' Hall on Wednesday, at 8 p.m. Carriages may be ordered for 11 p.m.

GENERAL INFORMATION.

The library of the town hall will be at the disposal of members for reading and writing. The inquiry office will be at the Channing Hall, opposite to the Surrey-street entrance to the town hall, and, during the business meeting (Tuesday and Wednesday), there will also be a temporary enquiry office in the ante-room of the Council Chamber. Telegrams and letters addressed to any member, care of "Oyez," Sheffield, will be taken charge of by The Solicitors' Law Stationery Society, Ltd., at the Society's table in the ante-room of the Council Chamber; or, if desired by the member, will be forwarded to his address in Sheffield as supplied to the hon. secretary of the Sheffield Law Society, Mr. C. Stanley Coombe, 4 and 6, Paradise-square, Sheffield. Members of The Law Society will be admitted to temporary membership of the following clubs on production of their tickets of membership issued for the meeting and entering their names in the respective visitors' books: Sheffield Club, Norfolk-street; Reform Club, St. James's-row; Athenæum, George-street. They will also be admitted to the links of the following golf clubs: Sheffield and District, Lindrick Course, near Shireoaks (L.N.E.R.); Hallamshire, Sandygate, Sheffield; Abbeydale, Beauchief Park, Sheffield. Ladies are invited to all functions except the banquet, but no member can receive more than one lady's ticket.

Legal Notes and News.

Appointments.

Mr. REGINALD CRIPPS, Assistant Clerk to the Windsor Board of Guardians, has been appointed Clerk to the Hungerford and Ramsbury Rural District Councils, and to the Hungerford and Ramsbury Boards of Guardians.

Mr. W. J. PARKIN (Marland) has been appointed Clerk to the Shap (Westmorland) Urban District Council.

Mr. PHILIP WOOD, solicitor, of the firm of Winslow and Buckingham, has been appointed Clerk to the North Bucks Assessment Committee. Mr. Wood was admitted in 1922.

Mr. LANCELOT E. HALL, LL.D., solicitor, a member of the firm of Messrs. Thos. Wm. Hall & Sons, 61, West-Smithfield, E.C.1, has been appointed Clerk to the Butchers Company in succession to the late Mr. Arthur Pearce. Mr. Hall was admitted in 1910, when he joined the firm.

Mr. ARCHIBALD CRAWFORD, K.C., has been appointed Director of the Economic League (Central Council). Mr. Crawford is a son of the late Mr. Robert Crawford, LL.D., Glasgow, and a brother of Sir William Crawford, K.B.E., of the Empire Marketing Board.

Wills and Bequests.

Brigadier-General Thomas Edward Topping, C.B., C.M.G., D.S.O., of Whitehall-caurt, S.W., at one time Mayor of Blackpool, a solicitor, died on July 8, aged 64 years, leaving £12,194. After certain bequests, he left the residue to his wife for life, with reversion to his brother, John James, requesting her, but without creating a trust, that she would leave one-half to the Victoria Hospital, Blackpool, and the other half to Rossall College, Rossall, near Fleetwood.

Mr. Henry George Stevens, solicitor, of Ashbrook House, Church Stretton, and Cross Hill, Shrewsbury, who died on 23rd June, aged sixty-nine, left estate of the gross value of £9,505. He left £50 to his faithful clerk, Miss Aileen Neuns, if still in his service.

RECORDER AND ST. GILES' CHRISTIAN MISSION.

The Recorder (Sir Ernest Wild, K.C.), after binding over two men who had been in custody since the last sessions, at the Central Criminal Court, said that the two cases had proved three things. They proved, first, that the best friend of a member of the criminal classes was the policeman; secondly, the advantage of having a permanent probation officer attached to the court; and thirdly, it gave one more illustration that men like Mr. Wheatley, of St. Giles' Christian Mission, were a godsend to judges. Whenever one was in trouble and wished to give people a chance, one had only to turn to admirable institutions of that kind, and one never turned in vain.

"THE EFFECT OF MENTAL STRESS ON MAN."

In the Section of Physiology at the meeting of The British Association, Professor R. J. S. McDowall introduced the subject of "The Effect of Mental Stress on Man."

He said the effect of mental stress and the effect of physical stress were very much alike. In both kinds of stress there was now definite evidence that alimentary activity in general was reduced and salivary and gastric secretion was markedly reduced. The lack of saliva in mental stress explained the presence of the carafe of water at the lecturer's table. There was good reason to believe that such conditions of stress might be largely responsible for many alimentary ailments and might in part be responsible for undue strain on the heart. Academic people suffered much from gastric troubles. Just before delivering a lecture on a subject he did not know much about, he had a blood pressure, not of 110, which was normal, but of 160. It was not his intention to discuss how mental stress could be avoided. It could not be avoided. But it should be intermittent. *The effect of stress was the great argument in favour of holidays for mental workers.*

In the discussion, Professor J. S. Haldane said men who did much mental work were very healthy. There was no more mental stress than in the profession of the law, where when men got to be seventy they began to be fit to be judges, and an old judge was exceedingly shrewd. High blood pressure kept a man's brain working efficiently. They must keep in mind the organism as a whole and not scare the public. One could quite accept that there was an increased efficiency from high blood pressure. One could go further than that and say that if an individual did not raise his blood pressure he did not reach his maximum efficiency.

Dr. H. W. Davies challenged a point made by Professor McDowall that in times of mental stress individuals were less liable to be hungry. He knew great composers who had a great craving for food. Creative work demanded large quantities of food.

PERMANENT COURT OF INTERNATIONAL JUSTICE.

JUDGMENT IN "LOTUS" CASE.

The Permanent Court of International Justice delivered judgment on Wednesday in last week, in the case between France and Turkey arising out of the collision which occurred on 2nd August, 1926, in the Aegean Sea between the French steamer "Lotus" and the Turkish collier "Boskourt," and in which the "Boskourt" was sunk and eight Turkish nationals were drowned.

The court gave judgment by the President's casting vote—the votes being equally divided—to the effect that Turkey, by instituting criminal proceedings in pursuance of Turkish law against Lieutenant Demons, officer of the watch on board the "Lotus" at the time of the collision, had not acted contrary to the principles of International Law. Consequently the court was not called on to give judgment on the question of the pecuniary reparation which might have been due to Lieutenant Demons if Turkey, by prosecuting him, had acted in a manner contrary to International Law.

Separate dissenting judgments were delivered by Dr. Loder (Holland), M. Weiss (France), Lord Finlay (Great Britain), M. Nyholm (Denmark), Mr. J. B. Moore (United States), and Professor Altamira (Spain).

On the arrival of the "Lotus" at Constantinople after the collision the Turkish authorities arrested Lieutenant Demons and Hassan Effendi, the master of the "Boskourt," who, after being held in detention for four weeks, were placed on trial for manslaughter. Lieutenant Demons pleaded that the collision occurred in international waters, and that he should, therefore, be tried in France. The Turkish Court held that the trial was valid, and on 15th September Lieutenant Demons was sentenced to eighty days' imprisonment. As the result of diplomatic representations by France he was released on bail, and it was agreed between the two countries that the matter should be referred to The Hague Court, which should be asked to decide whether the Turkish Court acted contrary to International Law and, if so, what compensation the Turkish Government should pay to Lieutenant Demons.

EXTINGUISHMENT OF MANORIAL INCIDENTS.

The Law of Property Act, 1922, laid down that, in all normal cases, the compensation payable to a lord of the manor for the extinguishment of forfeitures and incidents other than fines, reliefs, heriots and annual payments, shall be on the basis of 20 per cent. of the annual value of the land ascertained as provided by the Act. On the other hand it also laid down that where, by the custom of a manor, the tenant has an unrestricted right of demising and otherwise dealing with the land without the licence of the lord, no compensation in respect of such incidents is to be payable to the lord unless the Minister of Agriculture and Fisheries otherwise determines.

A public inquiry was recently held by Mr. Cyril Wood-Hill, the Assistant Legal Adviser to the Ministry, at Preston, Lancashire, into an application by the lord of the manors comprised in the Honor of Clitheroe, for such a determination by the Minister. Mr. F. K. Archer, K.C., and Mr. A. C. Hagon, instructed by Mr. F. D. Robinson, of Clitheroe, appeared on behalf of the Clitheroe Estates Company, Limited, the lord of the manors, and Mr. E. C. C. Firth, instructed by Mr. Thomas Woodcock, of Hazelingden, appeared on behalf of a committee of solicitors practising in the Honor which had been formed to represent the interests of the tenants generally in the Honor.

After considering the report of the inquiry, the Minister has determined that compensation for the extinguishment of the manorial incidents in question shall be payable to the lord at the rate of 2½ per cent. of the annual value of the land ascertained as provided in the Act, but that where derivative interests were granted by a copyholder to persons who were admitted as copyholders in respect of such interests, a tenant shall be liable to pay only such proportion of such compensation as the capital value of his separate interest in the land at the time of the extinguishment bears to the total of the capital values of the interests of all the tenants in the land.

It was mentioned at the inquiry that the number of tenants affected by this decision of the Minister was approximately 25,000, and that the total rateable values of all the properties concerned amounted to nearly £900,000.

Court Papers: Vacation Notice.

High Court of Justice.

LONG VACATION, 1927.—NOTICE (No. 2.)

During the remainder of the Vacation, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice MACKINNON.

COURT BUSINESS.—The Hon. Mr. Justice MACKINNON will sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday, in each week, for the purpose of hearing such applications of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judges' Papers), are to be left with the Cause Clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application is intended to be made.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above a copy of the writ must also be sent.

The Papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chambers of Mr. Justice ASTBURY and Mr. Justice CLAUSON will be open for Vacation business on Tuesday, Wednesday, Thursday and Friday only in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice MACKINNON will sit for the disposal of King's Bench Business in Judge's Chambers at 10.30 a.m. on Tuesday in every week.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 7th and 21st September, at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 14th and 28th September.

All Papers for making Decrees absolute are to be left at the Contentious Department, Somerset House, on the preceding Thursday, or before 2 o'clock on the preceding Friday. Papers for Motions may be lodged at any time before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of writ and two copies of pleadings (if any).

(3) Two copies of notice of motion, one bearing a 10s. impressed stamp.

(4) Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

VACATION REGISTRAR.—Mr. RITCHIE (Room 188).

Chancery Registrars' Office,
Royal Courts of Justice.
September, 1927.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 29th September, 1927.

	Middle Price 14th Sept	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	85¼	4	14	0	—		
Consols 2½%	54½	4	12	0	—		
War Loan 5% 1929-47	102 1/16	4	18	0	4	18	6
War Loan 4½% 1925-45	97⅛	4	12	6	4	16	6
War Loan 4% (Tax free) 1929-42	101⅛	3	18	0	3	19	6
Funding 4% Loan 1960-90	87½	4	11	6	4	13	6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93 5/16	4	6	0	4	7	6
Conversion 3½% Loan 1961	75 1/16	4	13	6	—		
Conversion 4½% Loan 1940-44	97⅛	4	12	0	4	15	0
Local Loans 3% Stock 1921 or after	63 5/16	4	15	0	—		
Bank Stock	256	4	14	0	—		
India 4½% 1950-55	93½	4	16	6	4	19	0
India 3½%	70	5	0	0	—		
India 3%	60	5	0	0	—		
Sudan 4½% 1939-73	92¾	4	17	0	4	18	0
Sudan 4% 1974	84¾	4	14	6	4	18	0
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years)	80¾	3	14	0	4	12	6
Colonial Securities.							
Canada 3% 1938	84¾	3	11	6	4	18	0
Cape of Good Hope 4% 1916-36	94	4	5	6	5	0	0
Cape of Good Hope 3½% 1929-49	81	4	6	6	5	0	0
Commonwealth of Australia 5% 1945-75	98½	5	1	6	5	2	6
Gold Coast 4½% 1956	95	4	14	6	4	17	6
Jamaica 4½% 1941-71	92¾	4	17	6	4	19	0
Natal 4% 1937	92	4	7	0	5	0	0
New South Wales 4½% 1935-45	90¾	5	0	0	5	7	0
New South Wales 5% 1945-65	98¼	5	2	0	5	4	0
New Zealand 4½% 1945	95½	4	14	6	4	18	0
New Zealand 5% 1946	102¼	4	18	0	4	17	0
Queensland 5% 1940-60	97	5	3	0	5	4	0
South Africa 5% 1945-75	102½	4	17	6	4	18	6
S. Australia 5% 1945-75	98½	5	1	6	5	2	6
Tasmania 5% 1945-75	100½	5	0	0	5	1	0
Victoria 5% 1945-75	99¾	5	0	0	5	1	0
W. Australia 5% 1945-75	99	5	1	0	5	2	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	63¼	4	15	0	—		
Birmingham 5% 1946-56	102	4	18	0	4	18	6
Cardiff 5% 1945-65	100¾	4	19	0	4	19	0
Croydon 3% 1940-60	68	4	8	6	5	0	0
Hull 3½% 1925-55	77¾	4	10	0	5	0	0
Liverpool 3½% redeemable at option of Corpn.	72½	4	16	6	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¾	4	15	6	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63	4	15	6	—		
Manchester 3% on or after 1941	63¼	4	15	0	—		
Metropolitan Water Board 3% 'A' 1963-2003	62½	4	16	0	4	17	0
Metropolitan Water Board 3% 'B' 1934-2003	63¾	4	14	0	4	16	0
Middlesex C. C. 3½% 1927-47	82	4	5	6	4	17	0
Newcastle 3½% Irredeemable	73	4	16	0	—		
Nottingham 3% Irredeemable	63½	4	14	6	—		
Stockton 5% 1946-66	101½	4	19	0	4	19	6
Wolverhampton 5% 1946-56	102¼	4	17	0	4	18	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	81½	4	18	0	—		
Gt. Western Rly. 5% Rent Charge	98½	5	1	6	—		
Gt. Western Rly. 5% Preference	92½	5	8	0	—		
L. North Eastern Rly. 4% Debenture	75	5	7	0	—		
L. North Eastern Rly. 4% Guaranteed	69	5	16	0	—		
L. North Eastern Rly. 4% 1st Preference	62½	6	8	0	—		
L. Mid. & Scot. Rly. 4% Debenture	80½	4	19	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	76½	5	5	0	—		
L. Mid. & Scot. Rly. 4% Preference	71½	5	12	0	—		
Southern Railway 4% Debenture	79½	5	0	6	—		
Southern Railway 5% Guaranteed	95	5	5	0	—		
Southern Railway 5% Preference	87½	5	14	0	—		